



**McSweeney Cynkar & Kachouroff, PLLC**  
TRIAL & APPELLATE LAWYERS

**January 23, 2025**

**The Honorable Jeffrey M. Bryan  
The United States District Court for the District of Minnesota  
316 N. Robert Street  
St. Paul, MN 55101**

**Re: Smartmatic., et al. v. Lindell, et al., Case No. 22-cv-00098-JMB-JFD;  
Defendants' Opposition and Response to "Plaintiffs' Motion to Exclude  
the Second and Supplemental Declarations of Benjamin Cotton"**

Dear Judge Bryan,

The Court should deny Plaintiffs' efforts to exclude the December Declarations of Benjamin Cotton because they are a result of the Plaintiffs' misrepresentations to the court and are otherwise substantially justified and harmless to Plaintiffs. This Court has "wide discretion" in fashioning appropriate sanctions under these Rules. *Rao v. St. Jude Med. S.C., Inc.*, 631 F. Supp. 3d 678, 719 (D. Minn. 2022); citing *Wegener v. Johnson*, 527 F.3d 687, 692 (8th Cir. 2008). Rules 16(f) and 37(c)(1) both provide that Courts should not award sanctions for an untimely disclosure where the conduct at issue was "substantially justified or is harmless," or where "other circumstances make an award of expenses unjust." *Rao v. St. Jude Med. S.C., Inc.*, 631 F. Supp. 3d 678, 719 (D. Minn. 2022); citing Fed. R. Civ. P. 16(f); 37(c)(1). Defendants were substantially justified in presenting Cotton's declarations based on Plaintiffs' prior misrepresentations and withholding of discoverable material subject to inspection by Cotton. It would be entirely unfair to exclude this testimony considering Plaintiffs' discovery violations and lack of candor.

### **I. Relevant Background.**

On February 1, 2023, Lindell and My Pillow filed their First Motion to Compel seeking information and an inspection of an exemplar BMD machine and any hardware and software from their BMD machines contained in Lindell's Requests for Production (Rule 34) and inspection of an "exemplar" machine and hardware (Defs. RFP Nos. 1, 8, 10). ECF No. 73. Plaintiffs responded that they did not have *any* exemplar BMD machine for inspection as all were in the possession of Los Angeles County in their warehouse. ECF No. 89 at pp. 18-19. In the hearing to resolve this, Judge Docherty asked plaintiffs specifically what Smartmatic had in their possession or control that "could be responsive" to Lindell and My Pillow's requests to inspect an exemplar machine or hardware and

Critical Thinking. Client Focus. A Will to Win.

Page 2 of 11  
 January 23, 2025

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software from their BMD machines. *See* ECF No. 108 at 25:24 – 26:1, 28:15-17 (asking specifically whether all Smartmatic BMDs were in the possession of LA County). Plaintiffs stated that “all BMDs” were in L.A. County’s possession and implied the only things that *could be* responsive to Lindell’s requests were “spare parts” like “screws or plastic facing.” *Id.* at 28:18-29:8. Based on these statements, Judge Docherty denied Lindell’s First Motion to Compel any production or inspection of an exemplar machine or hardware, noting that Smartmatic could not produce what they do not have. *See* ECF No. 160 at pp. 15,16 & 19.

Without any method for Lindell’s expert Ben Cotton to inspect any exemplar machine or hardware by Smartmatic, Cotton provided an expert report in September 2023. Cotton Report, Sept. 22, 2023, ECF No. 416-2. However, the same day, Plaintiffs provided their expert report by Dr. Sherman who stated that he inspected a substantially similar BMD machine (BMD150) provided by Smartmatic.<sup>1</sup> Sherman Report, Sept. 22, 2023, ¶25, note 2. After providing Sherman’s report, Smartmatic only then offered Cotton an “external walkaround” of the “similar” machine Dr. Sherman had inspected. *See* ECF No. 416-5, Ex. 2, Loftus 10.2023 Letter. This timeframe was the *first time* Plaintiffs admitted that they *did* have an exemplar or similar BMD machine or hardware in their possession—information that they specifically (and presumably intentionally) withheld from Judge Docherty and Lindell in February 2023. *See e.g.* ECF No. 108 at pp. 25-27.

Cotton stated the inspection parameters would be insufficient to assess any forensic information or vulnerabilities and Plaintiffs never offered any internal forensic inspection of their similar BMD150 machine to Defendants.<sup>2</sup> *See* Attach. 1, Cotton Dep., at pp. 18-19. During his deposition, Ben Cotton testified to various ways the BMD machines with the specs provided by Smartmatic and in their user manual would be vulnerable to network breaches and could not be air gapped. *See id. e.g.* 43:11-23, p. 17 & 92.

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<sup>1</sup> The exact BMD model used in the 2020 election was Smartmatic’s BMD100 which plaintiffs contend they have no custody, possession or control over. The BMD150 was not used in the 2020 election, but Smartmatic notes that the machine and hardware are in their possession and is “substantially similar” to the BMD100 that was used in the 2020 election. During arguments on Lindell’s First Motion to Compel (ECF Nos. 73 & 108), the Court gave Plaintiffs an opportunity to say where there was *anything* in their possession or control that could be produced for inspection (which necessarily would include a “substantially similar” BMD150 model), and Plaintiffs stated that “all BMDs” were in Los Angeles.

<sup>2</sup> *Id.*, footnote 1.

Page 3 of 11  
January 23, 2025

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Cotton also testified specifically that, given the opportunity, he would be prepared to rebut Sherman's opinions regarding his "inspection" of the BMD150 and connection to the internet. *See* Defs. Attachment 1, Cotton Dep., at pp. 45 – 47.

In November 2024, Plaintiffs filed a motion to exclude Cotton's report and testimony, stating that the Defendants' "never requested to inspect their exemplar BMD150." *See* ECF No. 416-5, ¶¶7-8. In support of Plaintiff's summary judgment motion, Sherman filed a declaration stating that there was "no breach" on the BMD machines based, in part, on his "inspection" of Smartmatic's BMD150—the exemplar machine that Smartmatic concealed from and misled the Court and Defendants about in February 2023. *See* ECF No. 395-60 at ¶3.

To rebut Plaintiffs and Sherman's statements, Lindell and My Pillow filed two declarations from Cotton reiterating his original opinions and testimony criticizing Plaintiffs' insufficient inspection offering and discussing network vulnerabilities based on specs and user manuals relating to Plaintiffs' BMD machines. *See* ECF Nos. 464 and 481.

Now, Plaintiffs have filed a motion demanding this court exclude Cotton's December declarations. *See* ECF Nos. 488 & 493. Not only should the Court disregard or otherwise deny Plaintiffs motions (including their motion to exclude Cotton's testimony altogether), but the Court should dismiss this case entirely or alternatively issue adverse jury instructions because Plaintiffs intentionally misled Lindell and the Court about their possession of "substantially similar" hardware presumably to obstruct discovery, *exhaust Lindell's resources*, and conceal discoverable information. These obstructive and withholding tactics require, at a minimum, denial of Plaintiffs' motion to exclude Cotton's December 2024 declarations.

**II. Cotton's December 2024 Declarations were substantially justified because of Smartmatic's prior obstructive and misleading disclosures and Dr. Sherman's additional information.**

Lindell and My Pillow were substantially justified in introducing Cotton's December Declarations because Plaintiffs' obstructed inspection of material equipment by misleading the Court and Lindell and the Plaintiff's summary judgment motion introduced a new factual basis to support falsity. Plaintiffs cite *Meyer v. Currie Tech Corp* in asking this Court to exclude Cotton's declarations, but *Meyer* is distinguished from the facts here. 329 F.R.D. 228, 233 (D. Neb. 2018). In *Meyer*, the Court excluded the late submissions because the party offering the reports did not provide *any justification* for their disclosure. That is

Page 4 of 11  
 January 23, 2025

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not the case here, and Lindell and My Pillow are substantially justified in offering Cotton’s declarations.

First, Cotton’s December Declarations are substantially justified because Plaintiffs withheld and misrepresented the existence of their hardware and BMD150 machine to Lindell *and Judge Docherty* during the parties’ hearing on Lindell’s First Motion to Compel production and inspection of an exemplar machine and hardware in February 2023.<sup>3</sup> See ECF Nos. 73, 89, 108. Now, Plaintiffs contend that Cotton “should have” produced a rebuttal report to address Sherman’s reliance on his BMD150 inspection. This is outrageous because such costly supplementation should never have been required had Plaintiffs not misled the Court in opposing Lindell’s First Motion to Compel (ECF No. 73), only offering an inspection around the time they learned that Lindell’s lead counsel was withdrawing from the case.<sup>4</sup>

Plaintiffs’ efforts to exhaust Lindell’s resources and engage in “gotcha” discovery tactics based on material misrepresentations and withholding is improper, sanctionable, and should doom Plaintiffs’ case to dismissal. *See Fed. R. Civ. P. 37(c)(1) and 37(b)(2)(A)(v).* Essentially, Plaintiffs argue that Lindell should be denied any clarifying expert information from Cotton because Plaintiffs were “successful” in misleading Lindell and the Court about their possession of an exemplar machine until they filed their expert report. Indeed, Cotton’s purported supplemental report regarding BMD150 would not have

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<sup>3</sup> In Lindell and My Pillow’s First Motion to Compel (ECF No. 73), Lindell sought to compel production and inspection of an “exemplar” BMD machine and hardware or software relating to his statements about Smartmatic’s machines. Plaintiffs stated they had “no exemplar machine or hardware” in their possession, custody, or control” and the court (Judge Docherty) denied Lindell’s motion in reliance on these statements. However, in Plaintiffs’ motion to exclude Cotton’s testimony and report (ECF No. 416), Plaintiffs’ counsel asserted that they “offered” an exemplar machine for inspection, but that Defendants never requested to inspect that machine. *See ECF No. 416-5.* This is a misleading representation.

<sup>4</sup> ECF Nos. 89 & 108 are Plaintiffs’ opposition to Defendants’ RFPs seeking production and inspection of an exemplar voting machine and any hardware wherein Plaintiffs stated they had no such material in their possession nor anything substantially responsive to these requests. *See ECF No. 416-5; but see ECF No. 108, at pp. 25-29.* Plaintiffs contend that Defendants “never requested to inspect” any exemplar machine or hardware in their possession. This is inaccurate as it was requested in Defendants’ RFPs 1, 8 & 10 at issue in Defendants’ First Motion to Compel (ECF No. 73). Notably, Plaintiffs’ “offer” for Cotton to inspect the BMD150 that Defendants’ “did not respond to” occurred months after Defendants’ First MTC, and around the time that Plaintiffs learned Lindell’s lead counsel was withdrawing from this case. *See e.g. ECF No. 225.*

Page 5 of 11  
 January 23, 2025

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been required if plaintiffs had not concealed this machine from Lindell and the court in opposing Defendants' Requests for production and inspection in February 2023. *See ECF No. 89, at pp. 18-19, ECF No. 108, at 25:24-26:1, 28:15-29:8.*

Plaintiffs are demanding a highly prejudicial result—namely that, despite their withholding, misrepresentations, and nonuniform inspections; that not only should Lindell be deprived of clarifying declarations at summary judgment; but should also be deprived completely of his cyber security expertise. *See e.g. Pls. Mot Exclude Cotton & ECF Nos. 488 & 493.* Plaintiffs should not be rewarded for misleading the court about their possession of relevant equipment that Mr. Cotton could have inspected prior to his expert report.

Second, Lindell had the right to rebut Sherman's new information that was not otherwise included in his expert report. Plaintiffs assert that Dr. Sherman's declaration did not raise any new points from his expert report. But, Dr. Sherman's declaration made distinct points that were not contained in his expert report including (1) new details regarding alleged "post-tabulation audits" of 43 states, and (2) description of the 1% manual audit in LA County – a new distinct methodology to support his findings pertaining to Smartmatic's BMD machine. *See Sherman Decl, ECF No. 395-60 ¶¶3, 11-13.*

Lindell is entitled to rebut these distinct points with a declaration from Cotton, and the Court should not exclude this declaration. *See Rao v. St. Jude Med. S.C., Inc.*, 631 F. Supp. 3d 678, 718–19 (D. Minn. 2022) (discussing that Rule 26(e) allows a party to submit a supplemental expert report when an expert becomes aware of new information that was unavailable at the time of initial report). Indeed, neither Lindell nor Judge Doherty was aware that Plaintiffs possessed any exemplar or similar hardware or machine for an inspection at the time of Cotton's original report. *See ECF No. 89, 108; but see ECF No. 416-5.*<sup>5</sup> At no point in this litigation, prior to summary judgment, have Plaintiffs stated they intended to rely on Dr. Sherman's assessment of their exemplar BMD150 to support any reliance on other state audits and the 1% manual audit in LA County.

Further, in discovery, Lindell requested *all facts* that Plaintiffs intended to rely on to support their contention that Lindell's statements about their machine network breach or inherent vulnerabilities were false. *See* Defs. Mot. Summ. Judg., Ex. D, ECF No. 439-4, at p. 9; *see also* Defs. Second Mot. to Compel, ECF No. 149. At no point in Plaintiffs' six supplemental interrogatory responses, nor at any point, did Plaintiffs state they would rely on Dr. Sherman's inspection of the BMD150 to prove falsity of Lindell's statements about

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<sup>5</sup> *See id.*, footnote 2.

Page 6 of 11  
January 23, 2025

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network vulnerabilities on their machines. *Id.* Accordingly, Defendants' introduction of the December 2024 declarations by Cotton (ECF Nos. 464 and 481) was substantially justified based on Plaintiff's new information and their prior misrepresentations that precluded Defendants' expert from inspecting the exemplar machine and hardware in Smartmatic's possession.

### **III. Even if the Court held that Cotton's December Declarations were improper, permitting Cotton's December Declarations are harmless to Plaintiffs.**

Even if the court found that Cotton's December declarations were not substantially justified, his testimony there is harmless because he does not alter from his original opinions or methodology, maintains his testimony from his deposition, and responds to new information from Plaintiffs summary judgment filings. This court has permitted supplemental reports even a year after the discovery deadline *if there is no prejudice to Plaintiffs*. *Rao v. St. Jude Med. S.C., Inc.*, 631 F. Supp. 3d 678, 719 (D. Minn. 2022) (noting that *even if* 3<sup>rd</sup> and 4<sup>th</sup> supplemental reports were not proper, there was no prejudice plaintiffs would suffer). Defendants' assertion that they will have to "re-depose" Cotton because of the December declarations is meritless because nearly all of Cotton's statements were reiterated or otherwise testified to in his original report and deposition.

Most of Cotton's statements in his December Declarations clarified and reiterated his original opinions and testimony, were already known by Plaintiffs, and therefore, do not prejudice plaintiffs nor require another deposition of Cotton. Plaintiffs are incorrect that Cotton's December declarations are an "unfair surprise" because Cotton did not alter or give any testimony that Plaintiffs were previously unaware of. This distinguishes this issue from *Williams v. TESCO Servs., Inc.* cited by Plaintiffs. 719 F.3d 968 (8th Cir. 2013). In *Williams*, the court excluded a supplemental report because it "altered" the expert's opinion. *Id.* Here, however, Cotton's declarations did not alter his opinion but doubled down on his original statements *and deposition testimony*. Indeed, Cotton's declarations clarified and reiterated many points made in his original declaration report *and* from his deposition testimony shown, in part, in the tables below.

Page 7 of 11  
 January 23, 2025

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**TABLE 1**  
**(SEPT. 2023 REPORT COMPARISON TO DEC. DECLS. COTTON)**

<u>Cotton Original Report</u> <u>Sept. 2023</u>	<u>Decl. 1 (ECF No.</u> <u>464)</u>	<u>Decl. 2 (ECF No. 481)</u>
<b>Cotton Subject: Cybersecurity vulnerabilities in Voting Systems</b>		
Page 5, ¶ 18: Over 290 vulnerabilities in the VSAP system, including USB ports and hardcoded passwords.  Page 6-7, ¶ 20-21: Failures in log management, cryptographic compliance, and antivirus updating.	Page 3, ¶ 8-9: Concerns about insufficient forensic access to voting systems, preventing full analysis of vulnerabilities.	Page 4, ¶ 7: Discussion about cybersecurity risks due to lack of proper testing and forensic examination of Smartmatic systems.
<b>Cotton Subject: Inadequate Testing and Oversight</b>		
Page 7, ¶ 21: Describes failures to update antivirus definitions and patch operating systems across systems.  Page 13, ¶ f: Discusses weaknesses in air-gapped systems.	Page 4, ¶ 14: Notes the lack of adequate forensic inspection, particularly regarding critical components like Wi-Fi modems.	Page 5, ¶ 17: Highlights the use of a mismatched model (BMD150 instead of BMD100) for inspection, questioning testing adequacy.
<b>Cotton Subject: Questionable Audit Trails and Log Management</b>		
Page 10, ¶ e: Lack of centralized log management and its impact on cybersecurity detection and audits.	Page 5, ¶ 19: Insufficient log retention and preservation to meet cybersecurity standards.	Page 6, ¶ 22: Raises concerns about Smartmatic's lack of proper forensic preservation for effective audit trails.
<b>Cotton Subject: Physical Security and Inspection Restrictions</b>		
Page 5, ¶ 16(k): No lockout mechanisms for failed password attempts.	Page 4, ¶ 16: Prevented physical inspection of critical components (e.g., Wi-Fi modems) due to restrictions by Smartmatic.	Page 5, ¶ 18: Criticizes the use of the BMD150 model, which was not used in the actual election, for inspection purposes.

Page 8 of 11  
January 23, 2025

<b>Cotton Subject: Claims of Vote Manipulation and Errors</b>		
Page 8-9, ¶ 26(a)-(c): References incidents of vote flipping and misallocation in Antrim County, Michigan, and DeKalb County, Georgia.		Page 9, ¶ 26(c): Highlights how such errors and misconfigurations align with broader systemic concerns in voting systems.
<b>Lack of Transparency and Comprehensive Access</b>		
Page 6, ¶ 20(b): Criticizes Smartmatic for not producing systems for full forensic examination.	Page 4, ¶ 16: Notes restrictions imposed by Smartmatic that prevent meaningful analysis.	Page 7, ¶ 21: Discusses the impossibility of making cybersecurity determinations without proper forensic access.

**TABLE 2**  
**(AUG. 2024 DEPOSITION TESTIMONY COMPARISON TO DEC. DECLS.**  
**COTTON)**

<b><u>Cotton Deposition</u></b> <b><u>Aug. 2024</u></b>	<b><u>Decl. 1 (ECF No. 464)</u></b>	<b><u>Decl. 2 (ECF No. 481)</u></b>
Criticism and rebuttal topics from Cotton regarding Dr. Sherman's report or methodology of network security. Insufficiency of October 2023 inspection protocol for the BMD150 (external permission for Cotton after original September report completed). Insufficiency of reliance on external sources. <i>See Attach. 1</i> , Cotton Dep. at pp. 45-47, 17:8-21:6, ant p. 184 (re: opinion on external reliance)	Insufficient Forensic Imaging, Incorrect model for inspection, physical restraints on inspection (no forensic or internal inspection), Sherman's reliance on "manuals" or external statements regarding other audits criticism. ECF No. 464 at p. 4, ¶¶15-18; p. 5 ¶¶17 & 19.	Direct Criticism of Dr. Alan Sherman's Inspection Methods: Highlights flaws in Dr. Sherman's methodology, particularly any reliance on external physical examination of BMDs that Cotton was offered which Cotton states are inadequate for assessing breaches or vulnerabilities. ECF No. 481 at p. 6, ¶22.

Page 9 of 11  
 January 23, 2025

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Information regarding network vulnerabilities learned in Antrim County, Michigan and other counties with similar software. <i>See e.g. id.</i> at pp. 100-104, 155-168.		Flipping of Votes in Specific Elections: Detailed examples of vote flipping in counties w/ similar machines: DeKalb, Williamson, Antrim (2020-2022) supported by root-cause analyses and misconfigurations. <i>Id.</i> at p. 9, ¶¶26(a)-(c).
Deposition testimony and opinion regarding Smartmatic and other voting machine Network vulnerabilities from BMD and VSAP systems. <i>Id.</i> at 100:3-104:8, 105:12-111:15, 112:16-117:10, 114:9-115:22, 118:5-121:14.  Information regarding original report discussion of vulnerabilities to unauthorized access, vote manipulation based on evaluations of system manuals and source code from similar machines and the possibility of remote access of databases. <i>Id.</i> at 16:19-17:22 & 39:8-41:6, 88:4-91:6, 123:22-126:1, 138:5-141:20 .		Vulnerability concerns regarding software and chain of custody concerns: Raises the possibility of memory scraping malware being injected into BMDs to manipulate memory (noting another example of a QR code) and Plaintiffs failure to prove or establish secure chain of custody for BMDs. <i>Id.</i> at p. 8, ¶¶25 and v.

Clearly, Plaintiffs are incorrect that they must now conduct another deposition of Cotton based on his December declarations because Cotton testified to nearly everything

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Page 10 of 11  
 January 23, 2025

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raised in his December declarations and has otherwise already provided consistent and clarifying information in his original analysis and testimonies that does not prejudice Plaintiffs.

Further, Plaintiffs make *two false assertions* in their letter to the Court when they stated that Cotton's original report never referenced (1) cyber security vulnerabilities of their BMD machines nor (2) Cotton's work in Antrim County, Michigan. These statements are inaccurate. Here, Cotton testified and opined originally that the BMD machines had inherent cyber security vulnerabilities in his deposition and throughout his original report. *See e.g.* Cotton Report, ECF No. 416-2, at pp. 5-7, 10, 13; *see also* Cotton Dep. 181:25 – 182:24 (discussing vulnerabilities in ballot marking devices through configuration of software). Further, Cotton's original report discussed the Antrim County, Michigan situation, among other specific examples. *Id.* at pp. 8-9, ¶ 26(a)-(c). In his deposition, Plaintiffs' counsel specifically deposed Cotton about Antrim County, Michigan and had sufficient opportunities to seek this information. *See* Attach. 1, Cotton Dep. at pp. 155 – 168. These are inaccurate statements that doom Plaintiffs' motion and entitle Defendants to attorney fees and costs for having to respond to this. Unlike Lindell, plaintiffs have had the exact same legal counsel throughout this litigation. There is no excuse to misrepresent facts unless Plaintiffs hope to "pull one over" on Lindell's new legal counsel in hopes they will not be discovered.

Alternatively, if the Court disregards any portion of Cotton's December 2024 Declarations (ECF Nos. 464 and 481) for purposes of summary judgment, the Court should also disregard all facts offered by Plaintiffs to prove falsity of Lindell's claims relating to their machine network security or hacking in fairness. It would be very prejudicial to deny Lindell any rebuttal at summary judgment where the Plaintiffs rely on facts that were withheld, misrepresented to the court, and otherwise never supplemented as far as their factual reliance. If the Court finds that any portion of Cotton's December declarations should be disregarded for purposes of summary judgment, Lindell and My Pillow request that the Court similarly disregard all facts and information offered by Plaintiffs about the security of their BMD machines to prove the falsity of Lindell's statements.

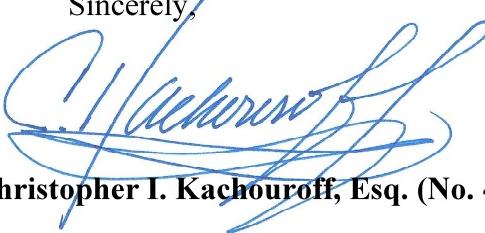
Finally, Defendants are entitled to dismissal of this matter entirely or striking Plaintiffs' pleadings or evidence relating to security of their BMD machines under Rule 37(c)(1) and 37(b)(2)(A)(v) because of Plaintiffs' material misrepresentations to this Court specifically in light of their intent to deprive the Defendants of expert testimony that relates to their prior withholding and misstatements. Plaintiffs bear the burden of proving falsity regarding network vulnerabilities of their BMD machines, and by inaccurately saying they had no possession of any exemplar machine or hardware, while providing their exemplar

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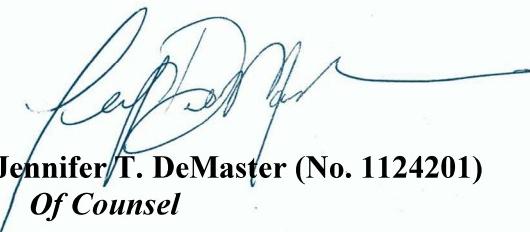
Page 11 of 11  
January 23, 2025

machine to *their* expert for inspection and then demanding exclusion of any responsive information, Plaintiffs' bad faith, dilatory tactics, and lack of candor to the Court cannot go unaddressed. Defendants are also entitled to any attorney fees and costs for responding to this motion and any other incurred costs that the Court deems appropriate.

Sincerely,



Christopher I. Kachouroff, Esq. (No. 44216)



Jennifer T. DeMaster (No. 1124201)  
*Of Counsel*

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## **ATTACHMENT 1**

**BENJAMIN COTTON**  
**Smartmatic USA Corp vs Michael J. Lindell**

**August 08, 2024**  
**1-4**

Page 1	Page 3
1                   IN THE UNITED STATES DISTRICT COURT	1                   APPEARANCES
2                   FOR THE DISTRICT OF MINNESOTA	2
3	3                   Appearing on behalf of the Plaintiffs:
4                   SMARTMATIC USA CORP.,	4                   TIMOTHY M. FREY
5                   SMARTMATIC INTERNATIONAL	5                   OLIVIA SULLIVAN
6                   HOLDING B.V. and SCO	6                   BENESCH FRIEDLANDER COPLAN & ARNOFF
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10	10                  osullivan@beneschlaw.com
11                  vs.                   Case No. 0:22-cv-00098-WMW-JFD	11
12	12                  Appearing on behalf of the Defendant:
13                  MICHAEL J. LINDELL and MY	13                  MCSWEENEY CYNKAR & KACHOUROFF, PLLC
14                  PILLOW, INC.,	14                  CHRISTOPHER KACHOUROFF
15	15                  13649 Office Place, Suite 101
16                  Defendants.	16                  Woodbridge, Virginia 22192
17	17                  chris@mck-lawyers.com
18	18
19                  VIDEOTAPED DEPOSITION OF BENJAMIN COTTON	19                  ALSO PRESENT: Don Savoy, Videographer
20                  THURSDAY, AUGUST 8, 2024	20
21                  9:35 a.m. PST	21
22	22
23	23
24	24
25	25
Page 2	Page 4
1                  BE IT REMEMBERED THAT, the videotaped deposition of	1                  EXAMINATION INDEX
2                  BENJAMIN COTTON was reported by Mary C. Soldati,	2
3                  Registered Professional Reporter and Certified Shorthand	3                  JOSEPH COTTON                   PAGE NO.
4                  Reporter, on Thursday, August 8, 2024, commencing at the	4                  By Mr. Frey                       6/196
5                  hour of 9:35 a.m. PST, the proceedings being reported	5                  By Mr. Kachouroff               192
6                  remotely from Portland, Oregon.	6
7	7                  EXHIBIT INDEX
8	8
9	9                  EXHIBIT NO.                   DESCRIPTION                   PAGE NO.
10	10
11	11                  Exhibit No. 705           Benjamin Cotton's               28
12	12                  Declaration
13	13
14	14                  Exhibit No. 706           ATSEC Source Code Review       77
15	15                  Report Voting Solutions For All
16	16                  People Version 2.0.
17	17                  Report Date 2020-1-06
18	18
19	19                  Exhibit No. 707           Court Order                   93
20	20
21	21                  Exhibit No. 708           County of Los Angeles       138
22	22                  VSAP Tally Voting System
23	23                  Staff Report
24	24
25	25                  Exhibit No. 709           New York Times Article       188

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
13-16

Page 13	Page 15
1 A. I was testifying on behalf of 2 Kurt Olsen and Andrew Parker. 3 Q. And Kurt Olsen and Andrew 4 Parker in that matter were the attorneys for 5 Kari Lake; is that right? 6 A. Correct. 7 Q. And a complaint had been lodged 8 by the Bar against Mr. Parker and Mr. Olsen; 9 is that right? 10 A. I'm not sure who lodged the 11 complaint. 12 Q. And what was the nature of your 13 testimony on behalf of those individuals? 14 A. My testimony hinged around the 15 cyber security weaknesses and current state 16 of the election systems in 2020. 17 Q. And was that in Maricopa County 18 in Arizona? 19 A. That is correct. 20 Q. And then you said, I believe, 21 you also provided deposition testimony in a 22 Michigan case; is that right? 23 A. That is correct. 24 Q. And is that the Antrim County 25 litigation?	1 Q. And so was that as a fact 2 witness, as opposed to an expert witness? 3 A. Yes. 4 Q. When did you provide that 5 testimony? 6 A. I haven't provided that 7 particular testimony. The case has been 8 continued on a repeated basis. 9 Q. Okay. So there's the Arizona 10 case, there's the State of Michigan vs. 11 Stephanie Lambert, and also the Antrim County 12 litigation. 13 Any other county litigation in 14 which you've provided deposition testimony? 15 And I'll go back to -- since 2020. 16 A. I have provided declarations in 17 the State of Georgia as well. 18 Q. And were you deposed in the 19 State of Georgia case, in the Raffensperger 20 case? 21 A. Yes, the Curling v. 22 Raffensperger case. 23 Q. And what was the topic of your 24 deposition in the Curling v. Raffensperger 25 case?
Page 14	Page 16
1 A. I provided -- I did provide 2 depositions and sworn affidavits in the 3 Antrim case. But there's also a case, State 4 of Michigan versus Stephanie Lambert, in 5 which I was called as a witness. 6 Q. What is nature of the State of 7 Michigan versus Stephanie Lambert litigation? 8 A. I can tell you what my part in 9 it was, and that is the -- once again, the 10 state of the electoral systems as it pertains 11 to cyber security and findings of election 12 data. 13 Q. Do you know what the case 14 against Ms. Lambert -- you know, what the 15 claims are against Ms. Lambert? 16 A. I don't know exactly what they 17 are, but I believe they hinge around 18 potential unauthorized access to voting 19 systems. 20 Q. And did your testimony in that 21 case deal with the access to the voting 22 systems? 23 A. I have not testified to that 24 effect yet. However, the prosecution did 25 call me as a witness.	1 A. It primarily hinged around 2 cyber security findings, based on my 3 examination of a Coffee County EMS server. 4 Q. And did that testimony in any 5 way have to do with whether or not there was 6 unauthorized access to the voting systems? 7 A. I was asked how I obtained 8 access to the EMS images. 9 Q. Any other instances of a 10 deposition or testimony you've given over the 11 last four years related to election security? 12 A. I believe that covers it. 13 Q. I want to talk a little bit 14 about how you became involved in this 15 particular litigation. 16 When were you initially 17 contacted to serve as an expert witness in 18 this case? 19 A. Specific to Smartmatic; is that 20 correct? 21 Q. Yeah, the Smartmatic versus 22 Lindell litigation. 23 A. Okay. As near as I recall, it 24 would have been the spring of '23. I was 25 asked by Andrew Parker to review some

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
17-20

<p style="text-align: right;">Page 17</p> <p>1 documents pertaining to the LA County 2 election systems.</p> <p>3 Q. And at the time Mr. Parker 4 asked you to review those documents, were you 5 given an assignment of what you are going to 6 be looking for, what he's going to ask you to 7 potentially opine on?</p> <p>8 A. He asked me to pay particular 9 attention to, one, was the system certified 10 by the EAC; two, the vulnerability in 11 assessment reports by the SEC; three, 12 determine whether or not these systems could 13 be connected to the Internet via wireless or 14 via ethernet connections; determine whether 15 or not those connections were air-gapped or 16 part of the public Internet.</p> <p>17 Q. Was your assignment to kind of 18 review those documents and make a 19 determination as to whether or not the -- you 20 know, you said whether or not they could be 21 connected to the Internet.</p> <p>22 Were you asked to make a 23 determine as to whether or not they were 24 connected to the Internet?</p> <p>25 A. If I could, from the documents.</p>	<p style="text-align: right;">Page 19</p> <p>1 report, through today, that you have not 2 chosen to inspect that ballot-marking device?</p> <p>3 A. Well, I would say that that 4 question is a little bit misphrased. It's 5 not that I haven't chosen to. It's that, to 6 my knowledge, it was never an option to 7 examine it.</p> <p>8 Q. Okay. So you were never told 9 that Smartmatic had offered the opportunity 10 to examine that device?</p> <p>11 A. No. The last information that 12 I had surrounding this issue was they were 13 trying to work out some protocols, and then 14 those protocols were not acceptable to a 15 thorough examination of the system.</p> <p>16 And at that point, I believe 17 Parker Daniels was removed from the case as 18 representation for Mr. Lindell. So I don't 19 know where that issue stands at this point.</p> <p>20 Q. Going back, then, to your 21 initial retention in this case, at the time 22 Mr. Parker asked you to review the documents 23 related to LA County, were you already 24 working with Mr. Parker with respect to other 25 litigation?</p>
<p style="text-align: right;">Page 18</p> <p>1 At that particular time -- well, still, to my 2 knowledge -- there has been no system 3 actually produced by Smartmatic to -- to 4 actually examine to determine, you know, the 5 forensics artifacts that remain on that 6 system.</p> <p>7 Q. Are you aware that Smartmatic 8 has offered the ability to examine a BMD 9 machine that is substantially similar to the 10 ones used in the November 2020 election?</p> <p>11 A. Prior to the Parker Daniels law 12 firm exiting, there was discussion about that 13 being a possibility.</p> <p>14 Q. Did you ever follow up to 15 determine whether or not to do that, to 16 perform that inspection?</p> <p>17 A. I have not been provided that 18 opportunity yet.</p> <p>19 Q. If you were provided the 20 opportunity, if it was offered, would you 21 take it?</p> <p>22 A. I would.</p> <p>23 Q. And do you have any 24 understanding as to why since, you know, 25 September of 2023 when you produced your</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I was. I was working with Mr. 2 Parker with respect to the Arizona 3 litigation.</p> <p>4 Q. And prior to the Arizona 5 litigation, had you ever worked with Mr. 6 Parker before?</p> <p>7 A. I had not.</p> <p>8 Q. How did you come to work with 9 Mr. Parker on the Arizona litigation?</p> <p>10 A. I'm not 100 percent sure as to 11 what their thought process was. I had been 12 selected by the Arizona Senate to perform a 13 forensics audit of the Maricopa County 14 election systems in 2021.</p> <p>15 And I believe that was the 16 impetus for them reaching out to me, is 17 because I did have that forensics knowledge 18 of the systems.</p> <p>19 Q. Do you know a gentleman named 20 Patrick Byrne?</p> <p>21 A. Yes. I have met Patrick Byrne.</p> <p>22 Q. And how do you know Patrick 23 Byrne?</p> <p>24 A. I was introduced to Patrick 25 Byrne through Stephanie Lambert.</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
21-24

<p style="text-align: right;">Page 21</p> <p>1 Q. And who is Stephanie Lambert?      2 A. Stephanie Lambert is the      3 attorney that engaged me for the Bailey v.      4 Antrim County litigation.</p> <p>5 Q. And what was the nature of your      6 interaction with Mr. Byrne?</p> <p>7 A. It was social. And I believe      8 that Mr. Byrne was funding some of the      9 efforts to assure voter integrity.</p> <p>10 Q. Have you discussed your      11 engagement in this case with Mr. Byrne?</p> <p>12 A. I have not.</p> <p>13 Q. Do you know a Matt DePerno?</p> <p>14 A. I do.</p> <p>15 Q. Who is Matt DePerno?</p> <p>16 A. Matt DePerno is the other      17 attorney who engaged me with respect to the      18 Antrim County litigation.</p> <p>19 Q. Have you had any conversations      20 with Matt DePerno regarding your engagement      21 in this case?</p> <p>22 A. I have not.</p> <p>23 Q. Do you know a gentleman named      24 Conan Hayes?</p> <p>25 A. Again, please?</p>	<p style="text-align: right;">Page 23</p> <p>1 A. I was asked to review some      2 data. The data that I got was not      3 satisfactory for me, so I did not participate      4 in that event.</p> <p>5 Q. Was that data the alleged PCAP      6 data -- P-C-A-P -- data that Mr. Lindell      7 claimed to have regarding the stolen      8 election?</p> <p>9 A. Yes. That data was supplied to      10 me via Dennis Montgomery and Conan -- I      11 apologize, I don't remember his last name --      12 but this -- the Conan individual.</p> <p>13 Q. And you said that the data that      14 you were asked to review was not satisfactory      15 to you.</p> <p>16 What was not satisfactory about      17 the data, in your opinion?</p> <p>18 A. It appeared incomplete, and the      19 small subset of data that I was provided did      20 not appear to contain election data.</p> <p>21 Q. Did you inform anyone of your      22 conclusions regarding this -- the data that      23 you were asked to review?</p> <p>24 A. I spoke to a gentleman by the      25 name of Walden, I believe his last name was,</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. Conan Hayes.</p> <p>2 A. I know of him. I do not know      3 him personally.</p> <p>4 Q. Have you ever spoken with Mr.      5 Hayes?</p> <p>6 A. I believe I have spoken to Mr.      7 Hayes twice in the past.</p> <p>8 Q. And do you recall when about      9 you spoke with Mr. Hayes?</p> <p>10 A. It was concerning the South      11 Dakota symposium that Mr. Lindell put on.</p> <p>12 Q. And was that the cyber      13 symposium in August of 2021?</p> <p>14 A. That sounds about right. I      15 don't have the exact dates in front of me.</p> <p>16 Q. My understanding is, he does      17 the symposium kind of each year, in the fall.      18 And so I was just curious, you know, if it      19 was three years ago, if it was this past, you      20 know, 2023?</p> <p>21 A. It was the first one that he      22 did.</p> <p>23 Q. Okay. And did you yourself      24 have any involvement in that first cyber      25 symposium?</p>	<p style="text-align: right;">Page 24</p> <p>1 who was kind of shepherding that process.      2 And I explained my concerns to him.</p> <p>3 Q. Have you ever, since that time,      4 been asked to review any data provided by Mr.      5 Dennis Montgomery?</p> <p>6 A. I have. Some --      7 (Cross talk.)</p> <p>8 BY MR. FREY:</p> <p>9 Q. Go ahead. Go ahead.</p> <p>10 A. Subsequently, approximately      11 about a year later, I was asked to take a      12 look at another set of PCAP data. And once      13 again, my analysis of the PCAP data was that      14 it was not sufficient to do a formal analysis      15 on for the purposes that they wanted me to do      16 that.</p> <p>17 Q. And were you asked to perform      18 that analysis as part of your role in this      19 case?</p> <p>20 A. No.</p> <p>21 Q. Who asked you to perform that      22 analysis?</p> <p>23 A. I believe that was Kurt Olsen.</p> <p>24 Q. Did you inform Mr. Olsen that      25 the data was insufficient to complete the</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
37-40

<p style="text-align: right;">Page 37</p> <p>1 provided by Mr. Montgomery, were you 2 compensated for that time? 3 A. Mr. Olsen would have 4 compensated me for that, yes. I think it was 5 about three hours on that. 6 Q. Okay. And you just charge your 7 kind of \$350 per hour for however many hours 8 you spent looking at it? 9 A. Correct. 10 Q. Are you -- have you been 11 retained as an expert by Mr. Lindell in 12 litigation filed by Dominion? 13 A. No. 14 Q. Have you been retained by 15 Mr. Lindell or by attorneys on Mr. Lindell's 16 behalf in litigation filed by Mr. Kumer? 17 A. No. 18 Q. So I want to go back to your 19 declaration here, Exhibit 705. 20 And I believe you said that 21 when you were initially approached by Mr. 22 Parker to work on this, you were asked to 23 review certain documents and look for certain 24 items; is that right? 25 A. Yes.</p>	<p style="text-align: right;">Page 39</p> <p>1 determination on -- based on a review of the 2 documents and the vulnerability assessments 3 that I reviewed. 4 Q. And so you were, then -- and 5 that's what I guess I am trying to 6 crystallize here, is your opinions in this 7 case relate to possibilities or potential 8 vulnerabilities, correct? Not actual fraud 9 occurring or actual remote access having 10 taken place; is that right? 11 A. Well, the basis for that was, 12 it was my understanding that Smartmatic was 13 resisting producing an actual system to be 14 examined by experts. 15 And the purpose of the 16 declaration was to attempt to get actual 17 voting systems for the purposes of forensic 18 examination as that next step. 19 Q. Do you understand that LA 20 County is the entity that owns those actual 21 voting machines? 22 A. Yes. 23 Q. And do you understand that -- 24 that Smartmatic would not have the ability to 25 turn over the voting machine, that it would</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. And Mr. Parker, then -- were 2 you then assigned to kind of write up your 3 findings? 4 A. I reviewed the documents. I 5 briefed the attorneys on my findings, and was 6 asked to put that into deposition form -- or 7 declaration form, I'm sorry. 8 Q. And did your assignment ever 9 include making a determination as to whether 10 or not there was voting manipulation in the 11 -- in LA County in the November 2020 12 election? 13 A. I believe it was mentioned as 14 an end goal, but, you know, I deal in facts 15 -- forensics facts. And without the 16 examination of a device that was actually 17 utilized in that litigation -- or in that 18 election, you know, I'm not able define that 19 there was fraud. 20 What I was able to determine 21 is, Is there a possibility of remote access? 22 Is there a possibility of manipulation of the 23 databases on the DMGs and those types of 24 things. 25 So I was able to make a</p>	<p style="text-align: right;">Page 40</p> <p>1 have to come from LA County? 2 A. You know, I leave those finer 3 distinctions to the attorneys. In some 4 cases, these voting companies actually just 5 lease those systems to the county. And in 6 other cases, the county actually owns them. 7 So I am not aware of which 8 configuration or which arrangement LA County 9 is under. So I leave that to the attorneys. 10 Q. Okay. But you didn't -- you 11 yourself are not offering an opinion or 12 commentary on whether -- who would be able to 13 provide that machine, fair? 14 A. Fair. 15 (Reporter clarification.) 16 THE WITNESS: "Fair." In other 17 words, I agreed with Mr. Frey. 18 BY MR. FREY: 19 Q. So let's turn to page 16 of 20 your declaration, then. You see in 21 paragraph 22, you state: 22 "Given the totality of the lack 23 of practical, effective cyber security 24 protections on all of the election 25 systems that I have examined, coupled</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
41-44

<p style="text-align: right;">Page 41</p> <p>1 with the lack of effective access 2 controls to systems, it is a near 3 certainty that the VSAP systems would 4 be vulnerable to unauthorized access 5 and vote manipulation through 6 technical processes."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And is that the opinion you 10 intend to offer in this case?</p> <p>11 A. Yes.</p> <p>12 Q. And again, so the opinion is 13 that the voting systems would have technical 14 vulnerabilities, right?</p> <p>15 A. The systems, as evaluated under 16 the source code review, and based on the 17 contents of the manuals, would have 18 vulnerabilities that could allow remote 19 access and manipulation of the databases on 20 those systems.</p> <p>21 Q. Okay. And just to be clear, 22 you're not opining that any actual vote 23 manipulation occurred, are you?</p> <p>24 A. No, because I have not been 25 able to examine a system that was actually</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. And so without looking 2 at that -- at the machine, you can't say one 3 way or the other, A, whether actual 4 manipulation occurred, right?</p> <p>5 A. Well --</p> <p>6 Q. Is that fair?</p> <p>7 A. -- I cannot definitively prove 8 that actual manipulation occurred during the 9 election without the examination of one of 10 the systems that was used in the election.</p> <p>11 Q. And are you also indicating 12 here in this last sentence that you -- 13 without examining one of the machines, you 14 cannot say whether it would be vulnerable to 15 unauthorized access?</p> <p>16 A. No, I'm not saying that. 17 Because based on my review of the -- of the 18 supporting documents, I can tell you that it 19 is vulnerable to remote access. 20 Either through API, buffer 21 overflows, memory injects, it certainly is 22 susceptible to those remote access 23 vulnerabilities.</p> <p>24 Q. And that's your opinion based 25 on the information you reviewed, right?</p>
<p style="text-align: right;">Page 42</p> <p>1 used in the course of that election.</p> <p>2 Q. And you also state after that 3 first opinion down at the bottom, you state: 4 "I understand that Smartmatic 5 has recently acknowledged that it has 6 an exemplar BMD machine that it has 7 not yet provided to defendant's 8 counsel."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. And you go on to say: 12 "Once I receive this machine, I 13 will able to supplement my report. I 14 would need to examine the VSAP system 15 to definitively prove that this 16 finding is directly applicable to the 17 Los Angeles County voting system," 18 right?</p> <p>19 A. Yes.</p> <p>20 Q. So are you saying there that -- 21 when you refer to, "this finding," is that 22 the finding that the systems would be 23 vulnerable to unauthorized access?</p> <p>24 A. Yes, and the manipulation of 25 the vote.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. That's correct.</p> <p>2 Q. We'll talk more about that 3 today. I'm just trying to understand what 4 your opinions are so that we can discuss 5 them.</p> <p>6 A. Sure.</p> <p>7 Q. And since the time that you 8 completed your declaration, I believe you 9 indicated that you have not done any further 10 work on this case, right?</p> <p>11 A. That's correct.</p> <p>12 Q. So is it fair to say that you 13 haven't learned any more information since 14 submitting this declaration that would allow 15 you to add to your opinions?</p> <p>16 A. Well, I have read reports of 17 the infiltration of the voter data from LA 18 County that resided on servers based in 19 China, due to an exploitation of some type 20 from the Konnech system which I believe LA 21 County utilizes.</p> <p>22 Q. And do you intend to offer any 23 opinions in this case regarding these reports 24 that you've read regarding exfiltration of 25 voter data?</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
45-48

<p style="text-align: right;">Page 45</p> <p>1 A. I have not been asked to offer 2 any opinions on that particular subject at 3 this time. 4 Q. And were you aware -- let me 5 step back a second. 6 Did you review the expert 7 report of Dr. Allen Sherman that was 8 submitted in this litigation on behalf of 9 Smartmatic? 10 A. I did. 11 Q. Did you understand that you had 12 the opportunity to submit a rebuttal to his 13 report? 14 A. I was not asked to submit a 15 rebuttal to his report. If I were to do so, 16 I would simply state that Doctor -- Dr. 17 Shepard, I believe it was? 18 Q. Sherman. 19 A. Sherman. Dr. Sherman is under 20 the same constraints that I am, and he in 21 fact acknowledges that as a footnote in his 22 report, that he did not actually examine a 23 system that was utilized in the course of the 24 election. 25 Q. Okay. So is that your critique</p>	<p style="text-align: right;">Page 47</p> <p>1 Dr. Sherman's report in this litigation? 2 A. Well, I didn't come prepared to 3 really critique his report. I'm sure I have 4 other comments. If I am asked to do that, I 5 will be glad to provide that. 6 Q. But you haven't been asked to 7 do that today, right? 8 A. No. 9 Q. Have you reviewed the report of 10 Ms. Tammy Patrick that was submitted on 11 behalf of Smartmatic in this litigation? 12 A. I have not. 13 MR. FREY: So I think I'm at a 14 change of topics here. It's been 15 about an hour, so maybe let's go off 16 the record for five minutes and take a 17 quick break. 18 THE WITNESS: Okay. Thank you. 19 THE VIDEOGRAPHER: We are going 20 off the record at 10:30 a.m. 21 (Break taken.) 22 THE VIDEOGRAPHER: We are back 23 on the record at 10:37 a.m. 24 BY MR. FREY: 25 Q. Mr. Cotton, we're back on the</p>
<p style="text-align: right;">Page 46</p> <p>1 of Dr. Sherman? Or just your response to him 2 is that he was not actually able to review a 3 system utilized in the course of the 4 election? 5 A. I would say that it invalidates 6 a good deal of what he was saying. You know, 7 as part of what his report stated, he stated 8 those were not connected to the Internet. 9 You know, that flies directly 10 in the face of the network diagrams and the 11 documentation inside of the user manuals for 12 the LA County voting system, in that they 13 have data that specifically resides inside of 14 the AWS cloud. 15 So, therefore, it has to be 16 connected to the Internet in some form or 17 fashion to access that data that resides in 18 the AWS cloud. 19 The issues about 20 vulnerabilities, he's constrained by the fact 21 that he saw an exemplar system in Florida, 22 but he did not actually see a device that was 23 owned, operated or leased by LA County as 24 part of his examination. 25 Q. Any other critique you have of</p>	<p style="text-align: right;">Page 48</p> <p>1 record. And right now, I'd like to turn to 2 kind of your background and education 3 experience. 4 If you could flip with me to 5 page 17 of your declaration, which I believe 6 is where your CV begins. 7 A. Okay, one second. Okay. I'm 8 there. 9 Q. Okay. Is this a copy of your 10 CV? 11 A. It's a copy of the CV, I 12 believe as it existed at that time, yeah. 13 Q. And this -- have you updated 14 your CV, I guess, since this time of 15 September 2023? 16 A. I have. 17 Q. What have you added to your CV 18 over the past year? 19 A. So, just let me see where I'm 20 at here. 21 So I've added specific 22 testimony experience and things of that 23 nature. 24 Q. But have you received any 25 additional degrees in the past year?</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
85-88

<p style="text-align: right;">Page 85</p> <p>1 A. No.</p> <p>2 Q. So you were examining those</p> <p>3 voting systems related to other litigation in</p> <p>4 which you were retained as an expert,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Did you rely upon your forensic</p> <p>8 review of these voting systems in rendering</p> <p>9 your opinions in this litigation?</p> <p>10 A. As a corpus of knowledge, I</p> <p>11 relied on that information that I obtained</p> <p>12 through those examinations for paragraphs 20</p> <p>13 and 21, which is the general cyber security</p> <p>14 posture for voting systems.</p> <p>15 Q. And do you -- let's go through</p> <p>16 them one at a time.</p> <p>17 So the first one is the voting</p> <p>18 system in Maricopa County Arizona. What</p> <p>19 company manufactured the voting system</p> <p>20 information you reviewed from Maricopa</p> <p>21 County?</p> <p>22 A. Dominion.</p> <p>23 Q. And what type of election</p> <p>24 technology system did you forensically</p> <p>25 examine?</p>	<p style="text-align: right;">Page 87</p> <p>1 all the digital media, and then used an FTK</p> <p>2 imageer to create a forensics image of each</p> <p>3 of those components.</p> <p>4 Q. Did you yourself --</p> <p>5 (Cross talk.)</p> <p>6 A. I've got a UPS device that is</p> <p>7 beeping and it's about to go off. So I need</p> <p>8 to reset something real quick.</p> <p>9 Q. Sure, no problem.</p> <p>10 MR. FREY: We can go off the</p> <p>11 record.</p> <p>12 THE VIDEOGRAPHER: We are going</p> <p>13 off the record at 11:30 a.m.</p> <p>14 (Break taken.)</p> <p>15 THE VIDEOGRAPHER: We are back</p> <p>16 on the record at 11:33 a.m.</p> <p>17 BY MR. FREY:</p> <p>18 Q. Okay. Mr. Cotton, we are back</p> <p>19 on the record. And my question was:</p> <p>20 Based on your prior answer that</p> <p>21 you followed standard digital imaging</p> <p>22 processes, et cetera, you -- it sounds like</p> <p>23 you yourself imaged the voting system</p> <p>24 components for Maricopa County, Arizona; is</p> <p>25 that true?</p>
<p style="text-align: right;">Page 86</p> <p>1 A. I examined all aspects of the</p> <p>2 digital computing devices, which included the</p> <p>3 Election Management Server, the EMS; the EMS</p> <p>4 clients; the adjudication work stations; the</p> <p>5 ICCs, which are the scanning controllers for</p> <p>6 the canon scanners.</p> <p>7 They also had four HiPro</p> <p>8 scanners, which were high volume scanning</p> <p>9 devices. Those were included as part of that</p> <p>10 examination.</p> <p>11 Q. Did you examine any ballot</p> <p>12 marking devices?</p> <p>13 A. They did not provide the ballot</p> <p>14 marking devices as part of that subpoena.</p> <p>15 But I did examine tabulators and the</p> <p>16 tabulator data cards.</p> <p>17 Q. So tabulators, tabulator data</p> <p>18 cards, EMS, scanners.</p> <p>19 But no BMDs, right?</p> <p>20 A. Correct.</p> <p>21 Q. How did you obtain the forensic</p> <p>22 images of these components of the voting</p> <p>23 system in Maricopa County Arizona?</p> <p>24 A. So I followed standard digital</p> <p>25 imaging processes, utilized a right block for</p>	<p style="text-align: right;">Page 88</p> <p>1 A. You mean some of them. We had</p> <p>2 a team of ten people that were performing the</p> <p>3 imaging. I personally conducted the training</p> <p>4 of all people to make sure they met the</p> <p>5 standards. They were part of my company.</p> <p>6 And we had some independent contractors</p> <p>7 contacted as well for this.</p> <p>8 So we baselined everybody, did</p> <p>9 essentially a mini-validation that they were</p> <p>10 following proper procedures, and then we</p> <p>11 imaged approximately 140 terabytes of data as</p> <p>12 part of that engagement.</p> <p>13 Q. And I don't need the exact</p> <p>14 date, but do you recall the time period in</p> <p>15 which you performed this imaging?</p> <p>16 A. It would have been from the</p> <p>17 middle of May for the next two weeks.</p> <p>18 Q. May 2021?</p> <p>19 A. Yeah.</p> <p>20 Q. So it wasn't imaged at the time</p> <p>21 of the election, correct?</p> <p>22 A. No. We were relying on the</p> <p>23 Arizona Senate to provide the devices under</p> <p>24 subpoena. And so it took -- the subpoena was</p> <p>25 issued in December of 2020, and then there</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
89-92

<p style="text-align: right;">Page 89</p> <p>1 were some court proceedings that delayed the 2 handoff of that equipment to -- I'm sorry, 3 April of 2021. 4 It would have been middle of 5 April 2021 to the first part of May. Two 6 weeks, roughly, is where it took us. 7 Q. And do you know whether at the 8 time you were able to image the devices in 9 the systems, whether they would reflect the 10 same setup and the same kind of operating 11 capacity abilities that they would have had 12 on election day in November of 2020? 13 A. Well, since there was a -- 14 well, let me preface this. 15 We assumed that they would, and 16 that assumption was based on the fact that 17 notice was provided to Maricopa County, that 18 there was pending litigation by the Senate. 19 And so, therefore, we assumed that there 20 would be a preservation of that data in 21 accordance with law. 22 Q. And after you imaged and 23 reviewed this information, did you appear as 24 an expert witness to testify regarding your 25 review?</p>	<p style="text-align: right;">Page 91</p> <p>1 Court in that case found that Rule 11 2 sanctions were appropriate against Ms. Lake's 3 attorneys? 4 A. You'd have to ask the attorneys 5 on that. I didn't pay a lot of attention to 6 that. 7 Q. And isn't it also true that 8 there was a special master appointed by the 9 Arizona State Senate in that litigation? 10 A. There was. 11 Q. And isn't it true that the 12 special master in that case disagreed with 13 your findings related to what the 14 forensically-imaged information showed? 15 A. That is true, they disagreed 16 with our findings. However, their report was 17 fatally flawed. 18 Q. Is that your opinion? 19 A. Well, I think it would be any 20 honest examination of the facts opinion. 21 One, their scope was strictly limited to the 22 network aspects of the systems. 23 That was the reason they 24 appointed the special master, is they did not 25 want to produce the routers and network data</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Yes. 2 Q. And was that -- is that the 3 Kari Lake litigation? 4 A. Yes. So there was also two 5 presentations to the public in the Arizona 6 Senate previous to that litigation. I 7 believe that would have been July and 8 possibly the first part of September of 2021. 9 Q. And you were retained by 10 attorneys representing Ms. Lake, correct? 11 A. I was. 12 Q. And isn't it true that that 13 litigation was dismissed by the Court? 14 A. I believe it was, but then it 15 was subsequently appealed. I believe they're 16 still -- they are still in legal proceedings 17 over that matter, as I understand it. 18 Q. And is that the case we talked 19 about earlier, wherein sanctions were awarded 20 against the attorneys for the client you were 21 retained by? 22 A. Well, I can't speak as to 23 sanctions. However, there was a complaint at 24 the bar. 25 Q. Are you aware of whether the</p>	<p style="text-align: right;">Page 92</p> <p>1 to the auditors. So they appointed a special 2 master. 3 The -- in that report, they 4 stated that Maricopa County had informed them 5 that there were no managed switches that were 6 part of the voting system. And because of 7 that statement and a brief inspection of a 8 computer routing rack that was created after 9 the election, the special master said they 10 could not have been connected to the -- there 11 was no -- they stated that there was no 12 managed switch, so therefore, there was no 13 data, and that it was an Air Gapped system. 14 The problem with that is that 15 Pro V&amp;V had been engaged in March of 2021 by 16 Maricopa County. And as part of their 17 examination for their audit, they listed a 18 managed switch. So it's clear that the 19 special master report did not have access to 20 the equipment and the configuration that 21 existed at the time of election, and at the 22 time of the Pro V&amp;V audit. 23 Q. The court found the special 24 master's findings to be dispositive, right? 25 A. The Court certainly considered</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
97-100

Page 97	Page 99
<p>1        Do you see that?</p> <p>2        A. I do.</p> <p>3        Q. And the Court says that the</p> <p>4 special master found, quote, "No evidence</p> <p>5 that the routers, manage switches, or</p> <p>6 electronic devices in Maricopa County's</p> <p>7 Ballot Tabulations Center connected to the</p> <p>8 public Internet," right?</p> <p>9        A. I see that.</p> <p>10      Q. And is this consistent with the</p> <p>11 special master's testimony?</p> <p>12      A. That is. However, what I would</p> <p>13 like to point out here is that the special</p> <p>14 master's examination of the current state of</p> <p>15 the Maricopa County network was conducted</p> <p>16 almost two and a half months after we imaged</p> <p>17 the devices.</p> <p>18      At no time did they request or</p> <p>19 did they examine the forensics images that we</p> <p>20 created that was the basis of my testimony.</p> <p>21      So in other words, they wrote a</p> <p>22 report without looking at the evidence. They</p> <p>23 wrote a report in which not all of the</p> <p>24 evidence, as it existed at the time of the</p> <p>25 election, existed.</p>	<p>1        "Although the plaintiffs'</p> <p>2 claims that Maricopa County's systems</p> <p>3 can be or have been connected to the</p> <p>4 Internet are in direct contradiction</p> <p>5 to the County Defendant's evidence and</p> <p>6 the special master's findings, the</p> <p>7 Court will treat them as unpersuasive</p> <p>8 arguments rather than as false</p> <p>9 assertions of fact, allowing</p> <p>10 plaintiffs the benefit of the doubt."</p> <p>11      Do you see that?</p> <p>12      A. I think the keyword there is</p> <p>13 they allowed the plaintiffs the benefit of</p> <p>14 the doubt. If you will review my report to</p> <p>15 the Senate, I itemized specific instances in</p> <p>16 which multiple connections were made external</p> <p>17 to the Air Gap network by the EMS.</p> <p>18      Q. And you maintain control or</p> <p>19 possession of the information that you</p> <p>20 forensically reviewed in this case?</p> <p>21      A. So I returned to forensics</p> <p>22 images to the Arizona State Senate.</p> <p>23      Q. Did you rely upon the forensic</p> <p>24 images from the Maricopa County voting</p> <p>25 systems in rendering your opinions in this</p>
Page 98	Page 100
<p>1        And they relied almost</p> <p>2 exclusively on the Maricopa County officials'</p> <p>3 assertion that it was an Air Gap network.</p> <p>4        So this was his decision, but</p> <p>5 quite frankly, I don't understand how you can</p> <p>6 make this decision when they didn't look at</p> <p>7 the evidence that we preserved. And the</p> <p>8 Senate had a copy of those images.</p> <p>9        And that did not include all</p> <p>10 the equipment that the Pro V&amp;V audit report</p> <p>11 validated was present at the time of the</p> <p>12 election.</p> <p>13      You know, I think we've all</p> <p>14 been in cases where we believe the judge got</p> <p>15 it wrong. And in this case, he definitely</p> <p>16 did.</p> <p>17      Q. As the Court then goes on to</p> <p>18 state at the bottom of that page, it says:</p> <p>19        "The special master's findings</p> <p>20 are consistent with what the County</p> <p>21 has long maintained and what previous</p> <p>22 audits have likewise concluded."</p> <p>23      Do you see that?</p> <p>24      A. I do.</p> <p>25      Q. And then the Court says:</p>	<p>1 case?</p> <p>2        A. From a corpus of knowledge as</p> <p>3 it pertained to cyber security, yes, in</p> <p>4 paragraphs 20 and 21.</p> <p>5        There was no dispute that they</p> <p>6 did not patch the systems, they had not</p> <p>7 updated the antivirus, they allowed remote</p> <p>8 access to the EMS, they had used the same</p> <p>9 password for all user accounts on the system.</p> <p>10      There's no dispute to that.</p> <p>11      Q. And I'm just trying to</p> <p>12 understand that -- the extent to which you</p> <p>13 relied upon that for rendering your opinions</p> <p>14 in this litigation.</p> <p>15      And that's in paragraphs 20 and</p> <p>16 21, you said, correct?</p> <p>17      A. Well, specifically to the Air</p> <p>18 Gap network, I relied on my personal</p> <p>19 knowledge and the ability to easily bypass</p> <p>20 Air Gap networks through various techniques.</p> <p>21 I did not rely on this particular finding by</p> <p>22 the judge as part of my report.</p> <p>23      Q. Okay. I want to talk about the</p> <p>24 next system that you forensically reviewed,</p> <p>25 and that's Antrim County, Michigan, correct?</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
101-104

	Page 101		Page 103
1	A. Correct.	1	write block.
2	Q. And what company manufactured	2	Q. Are you confident that it
3	the voting system information you reviewed	3	was --
4	from Antrim County?	4	A. And it was --
5	A. Dominion.	5	(Cross talk.)
6	Q. And was that the Dominion	6	(Reporter clarification.)
7	5.5(a), did you testify earlier?	7	THE WITNESS: It was in the
8	A. B.	8	N-case format.
9	Q. 5.5(b), okay.	9	BY MR. FREY:
10	A. 5.5(b) --	10	Q. Are you confident that it was
11	Q. I'm sorry?	11	collected in the manner that would
12	A. 5.5(a) is Georgia.	12	demonstrate how it would have performed on
13	Q. And what components of the	13	election day?
14	voting system did you forensically review in	14	A. I saw no indications that
15	Antrim County?	15	anything was modified on it. And within the
16	A. So with Antrim County, I had	16	N-case forensics image format, it has a
17	access to previously imaged -- to a	17	self-validation/verification function. And
18	previously-imaged forensics image of the EMS	18	the images -- the image is verified.
19	server, as well as the poll books and I	19	Q. And did you appear as an expert
20	believe an ICC.	20	witness related to your review of the
21	Q. So no BMD, correct?	21	information obtained from Antrim County?
22	A. And a BMD, yes.	22	A. Specific to Antrim County, I
23	Q. There was a BMD?	23	submitted an affidavit, but it did not reach
24	A. Yes.	24	court so I did not testify.
25	Q. And you don't recall one way or	25	Q. That litigation was dismissed
	Page 102		
1	the other whether BMDs were used in Antrim	1	by the court, correct?
2	County in the 2020 election?	2	A. Correct.
3	A. I don't recall if this was one	3	Q. Do you retain control or
4	that was actually used or one that they had	4	possession of the forensic images from Antrim
5	imaged.	5	County?
6	I actually had imaged that one,	6	A. I returned those to the
7	so I don't know if that one was actually used	7	attorney.
8	in the election or not, so...	8	Q. Did you review the forensic
9	Q. And it sounds like -- you said	9	images from Antrim County in the course of
10	you imaged one thing and then they had imaged	10	drafting your declaration in this case?
11	other things.	11	A. I reviewed the report at some
12	So who did the -- who obtained	12	point prior to writing this, but once again,
13	the information that you reviewed --	13	that formed the -- kind of the corpus of
14	A. I'd have to look at the custody	14	knowledge for paragraphs 20 and 21.
15	documents for the exact person, but I believe	15	Q. And in paragraphs 20 and 21,
16	it was a member of an organization called	16	you don't cite to any specific, you know,
17	ASOC.	17	findings or Antrim County specifically in
18	Q. Is that Colonel Waldron's	18	there, correct?
19	organization?	19	A. No, but what I did find was
20	A. I believe so, yes.	20	consistent among all of the Dominion systems,
21	Q. Do you know the manner in which	21	was an -- I would call it a complete and
22	they collected information?	22	utter lack of cyber security practices.
23	A. Based on the forensic images	23	The systems weren't patched,
24	that I got, it appeared to be created with	24	the antivirus wasn't updated, there was no
25	FTK Imager in conjunction with the use of a	25	mechanism to validate that only certified

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
105-108

Page 105	Page 107
<p>1 processes were being run, that only      2 authorized MAC addresses were communicating.      3       The user passwords had never      4 been changed since the date of the      5 installation of the software, and there was      6 repeated usage of the same password within      7 each jurisdiction for all user accounts. And      8 that had been across all Dominion.      9       Q. And we just -- we don't -- to      10 your knowledge, defendants have not produced      11 any of the information you're relying on here      12 to plaintiffs in this case, right?      13       A. No one has asked for it.      14       Q. And if the request were made,      15 would you be able to provide the images you      16 reviewed from Antrim County?      17       A. I would, but I would assume      18 that that would take a court order, because      19 one company is looking at another company's      20 proprietary data. But, yes, we would produce      21 that.      22       Q. Moving on to Mesa County,      23 Colorado.      24       What voting system information      25 did you review from Mesa County, Colorado?</p>	<p>1 exactly what she was charged with.      2 BY MR. FREY:      3       Q. And you said you got the image      4 that you reviewed from her attorneys; is that      5 right?      6       A. Yes.      7       Q. And was that in connection with      8 the defense of her criminal case?      9       A. That was my understanding, yes.      10      Q. And what work did you do with      11 that image?      12      A. I was asked to be a      13 non-testifying expert and review the findings      14 of another team's report.      15      Q. Do you maintain control or      16 possession of the image of the Dominion EMS      17 from Mesa County, Colorado?      18      A. I do not.      19      Q. Are you relying upon your      20 review of the Dominion EMS from Mesa County,      21 Colorado in rendering your opinions in this      22 case?      23      A. Only to the effect of the cyber      24 security implications for the election      25 systems as a whole.</p>
Page 106	Page 108
<p>1       A. I reviewed an image of the      2 Dominion EMS.      3       Q. So not a ballot-marking device,      4 correct?      5       A. Correct.      6       Q. And how did you obtain the      7 information or the image of the Dominion EMS      8 from Mesa County, Colorado?      9       A. I was provided that by the      10 legal team that was defending -- I'm sorry, I      11 don't remember her name right now -- but the      12 County clerk and the election official for      13 Mesa County.      14      Q. Is it Tina Peters?      15      A. It is. Thank you.      16      Q. Are you aware, then, that Ms.      17 Peters was indicted for copying this election      18 software from Mesa County Colorado without      19 authorization?      20      MR. KACHOUROFF: Objection.      21      (Inaudible) hypothetical.      22      Go ahead, you can answer the      23 question.      24      THE WITNESS: I knew she had      25 legal problems. I wasn't aware of</p>	<p>1       Q. Okay. What voting system      2 information did you review from Coffee      3 County, Georgia?      4       A. I was retained by Misty      5 Hampton's attorney to examine the EMS and one      6 ICC notebook as part of her defense for Misty      7 Hampton.      8       Q. And was that -- excuse me.      9                     (Discussion off the record.)      10      BY MR. FREY:      11      Q. So you reviewed the EMS and an      12 ICC notebook.      13      Was that a Dominion system?      14      A. That was, yes.      15      Q. And again, that's -- you did      16 not review an image of a ballot-marking      17 device, correct?      18      A. No.      19      Q. And do you know how the image      20 that you reviewed of the EMS and ICC notebook      21 was obtained?      22      A. Yes. I was provided that by --      23 or provided access to it by Stephanie      24 Lambert, who was the attorney for Misty      25 Hampton.</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
109-112

<p style="text-align: right;">Page 109</p> <p>1 Q. Okay. And was Ms. Lambert 2 representing Ms. Hampton against the charges 3 that she had illegally obtained this 4 information?</p> <p>5 A. I don't know exactly what Misty 6 Hampton's charges were, but there was the 7 possibility that she would be charged with 8 something.</p> <p>9 Q. And what was the purpose of 10 your review of the information?</p> <p>11 A. I think that gets a little bit 12 into the attorney-client work product piece 13 there, and they have not released that -- 14 they have not given me authorization to 15 discuss that.</p> <p>16 But I will tell you that for 17 the purposes of this declaration, I relied on 18 the general cyber security status indicative 19 on the EMS system.</p> <p>20 So passwords, remote access, 21 system patches, failure to update the 22 antivirus, and Internet access.</p> <p>23 Q. And do you maintain control or 24 possession of the this EMS ICC notebook 25 images?</p>	<p style="text-align: right;">Page 111</p> <p>1 iPad. And I visually inspected that, I did 2 not image that device.</p> <p>3 My purpose there was to 4 validate that the local election clerk had 5 that particular tablet secured behind a lock 6 and key and that it was functional.</p> <p>7 I subsequently was provided 8 data specific to the databases and the 9 compilation of the votes from the EPB thumb 10 drive for analysis.</p> <p>11 Q. "EPB," what does EPB stand for?</p> <p>12 A. Or, I'm sorry -- EDP, Election 13 Database.</p> <p>14 Q. And how did you obtain -- or 15 who obtained the EDP thumb drive for 16 analysis?</p> <p>17 A. That would have been the 18 attorney, Ms. Lambert.</p> <p>19 Q. And do you know how she 20 collected it?</p> <p>21 A. I do not.</p> <p>22 Q. Are you aware that also 23 criminal charges were considered against the 24 Adams County clerk related to her disclosure 25 of this voting system information?</p>
<p style="text-align: right;">Page 110</p> <p>1 A. That's an ongoing case, so yes, 2 I still have a copy of those forensic images.</p> <p>3 Q. And you understand that if it's 4 an ongoing case, that it's not been made 5 available to Smartmatic in this action, 6 correct?</p> <p>7 A. I certainly have not provided 8 it to you. I don't know if Ms. Lambert has 9 or not.</p> <p>10 Q. Again, I believe you said 11 you're relying on it to the extent of the 12 opinions you render in paragraphs 20 and 21?</p> <p>13 A. Correct.</p> <p>14 Q. And then the last one here, 15 Adams County, Michigan.</p> <p>16 What voting system information 17 did you review from Adams County, Michigan?</p> <p>18 A. So that was the Hart 19 Intercivic.</p> <p>20 (Reporter clarification.)</p> <p>21 BY MR. FREY:</p> <p>22 Q. What type of election 23 technology -- what were the components that 24 you reviewed from Adams County, Michigan?</p> <p>25 A. So I looked at the precinct</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I am.</p> <p>2 Q. And that's the data you 3 obtained?</p> <p>4 A. Yes. I would like to also 5 clarify that in my engagement letter, I have 6 a paragraph 10 that states -- it's an 7 indemnity clause in which the attorneys I 8 engage represent that all data that they 9 present to me for examination is legally and 10 lawfully obtained, and that they have a right 11 to authorize me to examine it.</p> <p>12 Q. So you're relying on the 13 attorneys there, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And do you still maintain 16 control or possession of the EDP from Adams 17 County?</p> <p>18 A. I do. It's an ongoing case.</p> <p>19 Q. Did you rely upon this 20 information from Adams County in rendering 21 your opinions in this case?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 MR. FREY: Let's take another 25 break -- I'm at a good point -- and</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
113-116

<p style="text-align: right;">Page 113</p> <p>1 use five minutes.</p> <p>2 THE VIDEOGRAPHER: Going off</p> <p>3 the record at 12:06 p.m.</p> <p>4 (Break taken.)</p> <p>5 THE VIDEOGRAPHER: We are back</p> <p>6 on the record at 12:41 p.m.</p> <p>7 BY MR. FREY:</p> <p>8 Q. All right. Mr. Cotton, we're</p> <p>9 back on the record. I want to briefly talk</p> <p>10 about the scope of your opinion in this case</p> <p>11 again, and to confirm that -- are the</p> <p>12 opinions you set forth here in your</p> <p>13 declaration the opinions you intend to offer</p> <p>14 at trial in this matter?</p> <p>15 A. Yes.</p> <p>16 Q. Are you planning to offer any</p> <p>17 other opinions not identified in your</p> <p>18 declaration?</p> <p>19 A. I haven't been asked any other</p> <p>20 opinions at this point. If I was asked, I</p> <p>21 would write an addendum, should more</p> <p>22 information become available.</p> <p>23 Q. Do you intend to perform any</p> <p>24 additional analysis?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Have you watched Mr. Lindell's</p> <p>2 documentary, Absolutely 9-0?</p> <p>3 A. I have not.</p> <p>4 Q. And have you watched Mr.</p> <p>5 Lindell's documentary, Scientific Proof?</p> <p>6 A. I have not.</p> <p>7 Q. You did attend Mr. Lindell's</p> <p>8 cyber symposium in August of 2021, correct?</p> <p>9 A. I went there. The data that I</p> <p>10 had been promised would be provided to me was</p> <p>11 not provided, and so I did not stick around.</p> <p>12 I was not actually part of the symposium.</p> <p>13 Q. And so is it your opinion,</p> <p>14 then, that at least to your review or what</p> <p>15 you have seen, the alleged PCAP data</p> <p>16 demonstrating the November 2020 U.S. election</p> <p>17 was manipulated is not evidence that the</p> <p>18 election was manipulated?</p> <p>19 A. All I can respond to is the</p> <p>20 data that was provided to me. Whether or not</p> <p>21 or that was the entire body of data that was</p> <p>22 provided to the other 15 or 20 experts, I</p> <p>23 cannot opine to.</p> <p>24 But I can tell you that the</p> <p>25 data that was provided to me was not</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Do you currently intend to</p> <p>2 change any of the opinions set forth in your</p> <p>3 declaration?</p> <p>4 A. No.</p> <p>5 Q. Are you offering any opinions</p> <p>6 in this case on the truth of the statements</p> <p>7 Mr. Lindell published regarding Smartmatic's</p> <p>8 alleged role in the validity of the 2020 U.S.</p> <p>9 election?</p> <p>10 A. No.</p> <p>11 Q. Are you aware of the statements</p> <p>12 Mr. Lindell published regarding Smartmatic</p> <p>13 and its alleged role in manipulating the 2020</p> <p>14 U.S. election?</p> <p>15 A. I am not aware of specific</p> <p>16 statements by Mr. Lindell.</p> <p>17 Q. Have you reviewed Smartmatic's</p> <p>18 first amended complaint in this litigation?</p> <p>19 A. I don't believe I have.</p> <p>20 Q. Have you watched Mr. Lindell's</p> <p>21 documentary, Absolute Proof?</p> <p>22 A. I have not.</p> <p>23 Q. Have you watched Mr. Lindell's</p> <p>24 documentary, Absolute Interference?</p> <p>25 A. I have not.</p>	<p style="text-align: right;">Page 116</p> <p>1 sufficient for me to make an opinion on that.</p> <p>2 Q. And you're not intending to</p> <p>3 offer any affirmative opinions in this case</p> <p>4 regarding the validity of the alleged PCAP</p> <p>5 data, right?</p> <p>6 A. That is not within the scope of</p> <p>7 my declaration.</p> <p>8 Q. Are you aware of statements</p> <p>9 published by Mr. Lindell and Dr. Frank</p> <p>10 regarding a 6th degree polynomial algorithm</p> <p>11 that was used to manipulate the November 2020</p> <p>12 U.S. election?</p> <p>13 A. Only tangentially. I remember</p> <p>14 hearing something about it, and I don't even</p> <p>15 remember where I heard about it.</p> <p>16 But, you know, my area of</p> <p>17 expertise is computer forensics, cyber</p> <p>18 security. So I don't know much about that.</p> <p>19 Q. So you're not going to offer</p> <p>20 any opinions regarding that theory as an</p> <p>21 expert in this case, correct?</p> <p>22 A. No.</p> <p>23 Q. Are you aware of claims made by</p> <p>24 Mr. Lindell and others that cast vote records</p> <p>25 indicate that the election in LA County was</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
117-120

<p style="text-align: right;">Page 117</p> <p>1 manipulated by Smartmatic?</p> <p>2 A. I am not.</p> <p>3 Q. So is it fair to say that you</p> <p>4 will not be offering any opinions in this</p> <p>5 case regarding what cast vote records may</p> <p>6 indicate regarding the integrity of the 2020</p> <p>7 election in LA County?</p> <p>8 A. That is not currently within</p> <p>9 the scope of my engagement.</p> <p>10 Q. Are you familiar with the</p> <p>11 Election's Infrastructure Government</p> <p>12 Coordinating Council?</p> <p>13 A. Are you talking the DHS entity?</p> <p>14 Q. Yes.</p> <p>15 A. I am aware of it, yes.</p> <p>16 Q. Are you familiar with it at</p> <p>17 all?</p> <p>18 A. To a high-level degree, nothing</p> <p>19 in detail.</p> <p>20 Q. How about the Election</p> <p>21 Infrastructure Sector Coordinating Executive</p> <p>22 Committee?</p> <p>23 A. I'm aware that it exists. I am</p> <p>24 not a member of it.</p> <p>25 Q. Were you aware that on</p>	<p style="text-align: right;">Page 119</p> <p>1 incongruities with the forensics facts versus</p> <p>2 the statement that was released.</p> <p>3 Q. And the basis for that is the</p> <p>4 forensic work you did in Maricopa County,</p> <p>5 Arizona; is that right?</p> <p>6 A. Maricopa, Antrim, and Georgia.</p> <p>7 During the case of Antrim, there was clearly</p> <p>8 votes that were flipped. There's still some</p> <p>9 debate a bit about why that happened, but the</p> <p>10 clerk caught those. So we do know that that</p> <p>11 did occur, but that was corrected.</p> <p>12 So, you know, there are some</p> <p>13 inconsistencies with the absolute statement</p> <p>14 on that report that they released.</p> <p>15 Q. Are you intending to offer</p> <p>16 opinions in this case regarding the outcome</p> <p>17 of elections in Michigan, Arizona, or</p> <p>18 Georgia?</p> <p>19 A. That's not within the scope.</p> <p>20 And I will tell you that my testimony will be</p> <p>21 centered around forensics findings and</p> <p>22 forensics evidence on the systems that I have</p> <p>23 examined.</p> <p>24 Q. Are you aware of any evidence</p> <p>25 of actual voter manipulation or actual vote</p>
<p style="text-align: right;">Page 118</p> <p>1 November 12, 2020, these two -- that the</p> <p>2 EIGCC and the EISEC issued a report stating</p> <p>3 that the November 3rd election was the most</p> <p>4 secure in American history, and that there's</p> <p>5 no evidence of any voting system lost -- any</p> <p>6 voting system lost or deleted votes, changed</p> <p>7 votes, or was in any way compromised?</p> <p>8 A. I am aware they issued that</p> <p>9 report, yes.</p> <p>10 Q. Do you disagree with that</p> <p>11 statement?</p> <p>12 A. I do disagree, to the extent of</p> <p>13 my knowledge on the systems that I have</p> <p>14 examined.</p> <p>15 In the case of Arizona for</p> <p>16 example, there were several hundred thousand</p> <p>17 ballots deleted off of the EMS by the time</p> <p>18 that we received that. Some of those were</p> <p>19 actually during the election time period.</p> <p>20 So I would have to understand</p> <p>21 better the full scope and the basis for their</p> <p>22 statement before I could really opine on the</p> <p>23 validity of it.</p> <p>24 But I know from personal</p> <p>25 experience, there do appear to be some</p>	<p style="text-align: right;">Page 120</p> <p>1 manipulation occurring in LA County in the</p> <p>2 November 2020 U.S. election?</p> <p>3 A. I have not been able to examine</p> <p>4 the actual systems. So once again, from a</p> <p>5 forensics standpoint, I am not aware because</p> <p>6 I have not been able to examine the actual</p> <p>7 systems.</p> <p>8 Q. And I believe in preparing your</p> <p>9 declaration, you reviewed a number of</p> <p>10 documents related to the VSAP 2.1</p> <p>11 certification, right? Those are listed in</p> <p>12 paragraph 14 of your -- or 13 of your report?</p> <p>13 A. That is correct.</p> <p>14 Q. And aside from reading these</p> <p>15 documents and the version 3.0 certification</p> <p>16 documents, what else did you do to</p> <p>17 familiarize yourself will the LA County VSAP</p> <p>18 initiative?</p> <p>19 A. I obviously read the web page</p> <p>20 articles that they had. Anything related to</p> <p>21 VSAP, I reviewed those pages. And I reviewed</p> <p>22 the reports, I reviewed the source code</p> <p>23 report and those items as listed in my</p> <p>24 declaration.</p> <p>25 Q. What is your understanding of</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
121-124

<p style="text-align: right;">Page 121</p> <p>1 the components of the VSAP system used in 2 November 2020 that were manufactured or 3 designed by Smartmatic? 4 A. Well, I looked at it from -- 5 from a systematic hold perspective. And so, 6 you know, there's various components. 7 My understanding is that 8 Smartmatic has a component within all of 9 those related systems. My scope of this work 10 was not related specifically to Smartmatic, 11 it was to the VSAP system. 12 Q. So in -- I guess, in performing 13 your work, you didn't worry so much about 14 whether it was a Smartmatic manufactured 15 component versus a component manufactured by 16 someone else? 17 A. That's correct. 18 Q. Okay. In the course of your 19 analysis in this case, did you explicitly 20 analyze or consider the ballot marking 21 devices? 22 A. Only to the extent that there 23 were reports or evaluations based on those 24 ballot marking devices. 25 Q. What is your understanding of</p>	<p style="text-align: right;">Page 123</p> <p>1 A. I do not recall. That would be 2 in the user's manual. 3 Q. Do you know whether the ballot 4 marking devices used in LA County in 5 November 2020 tabulated votes? 6 A. I believe those votes were 7 transmitted to a central tallying facility. 8 I believe that was called BMG. 9 Q. Do you know whether the ballot 10 marking devices used in LA County in 11 November 2020 would store votes? 12 A. It would obviously store those 13 votes prior in some medium, either in memory 14 or on thumb drive or removable media, until 15 those votes were transmitted to the central 16 counting facility. 17 Q. Do you know whether the 18 ballot-marking devices used in LA County in 19 November 2020 generated a paper ballot? 20 A. I do not know. 21 Q. What is your understanding of 22 BMG system in LA County's VSAP initiative? 23 A. So the BMG is basically a 24 manager for all of the ballot-marking 25 devices, and also contains some capacity or</p>
<p style="text-align: right;">Page 122</p> <p>1 the functionality of a ballot-marking device? 2 A. Well, a ballot-marking device 3 is a computing device that contains 4 vendor-specific application software that a 5 user either disabled or, in some 6 jurisdictions -- like in Georgia, for 7 example -- they do this for all voters. 8 But through the interaction of 9 the user and the application, they were able 10 to indicate on a stored ballot what their 11 voting preferences are, and then that vote is 12 tallied and recorded as part of the voting 13 process. 14 In some cases, they will 15 present a screen after the user has selected 16 the votes and the voter will confirm on the 17 screen; or in some cases, they actually print 18 something out and the voter supposedly looks 19 at that, validates it. 20 And then once they commit, then 21 that vote is considered closed and is then 22 counted as part of the election process. 23 Q. Do you know in LA County, 24 whether the BMD printed out the ballot before 25 allowing the voter to cast their ballot?</p>	<p style="text-align: right;">Page 124</p> <p>1 the function for a centralized repository for 2 the different voting tabulations. 3 Q. When you say "a centralized 4 repository for the different voting 5 tabulations," could you explain what you mean 6 by that? 7 A. Well, the votes can be 8 transmitted to that BMG and then aggregated 9 into a total. 10 Q. What is the basis for your 11 understanding in that regard? 12 A. My review of the user's manual. 13 Q. It's your understanding there 14 that the BMG would take a record of an 15 electronic record of the vote from the 16 ballot-marking device? 17 A. It can. I haven't examined the 18 actual systems that were used in the 19 election, so I don't know what their 20 configuration was or how they functioned in 21 that particular election. 22 Q. If the BMG did not create an 23 electronic record of a vote, would that 24 impact your opinions at all? 25 A. No, because I'm approaching</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
125-128

<p style="text-align: right;">Page 125</p> <p>1 this from a cyber security perspective, can 2 you get remote access to an individual 3 component?</p> <p>4 The ATSEC report evaluated all 5 of the different components, not just the 6 BMG. So it wouldn't change my opinions.</p> <p>7 Q. In forming your opinions in 8 this case with respect to the ability to 9 remote -- to gain remote access, have you 10 formed opinions or do you have opinions 11 regarding what could or could not be done 12 with that remote access?</p> <p>13 A. I have some opinions to that. 14 And obviously, as I get the opportunity to 15 examine these specific devices, I would form 16 more.</p> <p>17 But based on the 18 vulnerabilities that are in the ATSEC report, 19 you have the ability to iterate the running 20 processes remotely.</p> <p>21 You have the ability to inject 22 -- do memory injections on these devices. 23 You have the ability to perform buffer 24 overflows on these devices.</p> <p>25 You have the ability to</p>	<p style="text-align: right;">Page 127</p> <p>1 communicating with those ports. 2 Q. So if a port was fingerprinted, 3 I suppose, what would someone do with that?</p> <p>4 A. Just as one example, they run 5 SQLite databases. SQLite databases could 6 communicate on port 1443 and 1445.</p> <p>7 If you fingerprint a port, one, 8 you validate that they are running SQL; and 9 two, you know exactly which ports they are so 10 that you can then craft buffer overflows that 11 you may be able to get command line access 12 back into the SQL server for that port.</p> <p>13 That's just one example of 14 that.</p> <p>15 Q. What do you mean by "a buffer 16 overflow"?</p> <p>17 A. So a buffer overflow is a 18 specific type of vulnerability in which you 19 send a specific formed packet to that device, 20 and that -- the packet instructions will 21 exceed the expected buffer length for a given 22 technology.</p> <p>23 So SQL, for example: It's 24 expecting a payload package with X-amount of 25 characters in it. If you -- for a buffer</p>
<p style="text-align: right;">Page 126</p> <p>1 manipulate vulnerabilities, such that you 2 could overwrite specific files within these 3 end points.</p> <p>4 And you have the ability to 5 escalate your user privileges if you do have 6 access to the systems.</p> <p>7 Q. I want to take those one at a 8 time.</p> <p>9 So the first thing you said, I 10 believe, is the ability to iterate running 11 processes.</p> <p>12 What do you mean by "iterate 13 running processes"?</p> <p>14 A. Well, there's no protection on 15 the ports, from what I can tell, on the 16 vulnerability listings to prevent the 17 interrogation of the devices.</p> <p>18 And based on the return of the 19 -- it's called fingerprinting your ports, 20 okay?</p> <p>21 So there's no protection that I 22 can see, either from a firewall or other 23 methodology, that would prevent the 24 fingerprinting of those ports so that you 25 understand what processes are running and</p>	<p style="text-align: right;">Page 128</p> <p>1 overflow, what you can do is, once that 2 expected length of a packet is reached, you 3 can then insert commands and specific code 4 after that so that it is executed in memory.</p> <p>5 And per the -- per the report, 6 they did not appear to have -- or those 7 systems were susceptible to buffer overflow 8 methodologies, and that's in the ATSEC 9 report.</p> <p>10 Q. So if the buffer overflow 11 methodology is used and a specific code is 12 put into a BMD, what impact, if any, would 13 that have?</p> <p>14 A. Well, it depends on what your 15 attacking and what the code is. But 16 theoretically, you could change the contents 17 of the local database on the BMD.</p> <p>18 You could change the CVR. You 19 could change the ballot image that's 20 presented to the voter.</p> <p>21 I mean, you know, it really 22 depends on what your objective is as an 23 intruder or a hacker at that particular 24 point, as to what you could do.</p> <p>25 Q. And do you agree that if the</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
137-140

Page 137	Page 139
1 to obtain certification? 2 A. Well, the ATSEC report is 3 certainly used to identify vulnerabilities. 4 The follow-on remediation piece, that's 5 entirely up to the County, whether or not 6 they want to address those or try to use 7 compensating controls for those 8 vulnerabilities. 9 Q. Did you review any 10 documentation from the County regarding how 11 they were addressing identifying 12 vulnerabilities? 13 A. I don't recall reviewing a 14 document in which they addressed the 15 vulnerabilities. 16 Q. And you did not review any 17 documents not listed in your report here, at 18 page -- 19 A. Well, I've indicated that I did 20 look at the websites for LA County, and I 21 didn't list every website and things. 22 But the documents listed in my 23 declaration are the primary basis for my 24 report. 25 Q. So there's a -- Item 13-D in	1 Q. And if you go to the fifth page 2 of the document, do you see that it lists the 3 source code findings review and then the 4 staff analysis of that finding? 5 A. Yeah. 6 Q. And various of these indicate 7 that the finding was resolved, correct? 8 A. Yes. 9 Q. Walking through this 10 paragraph 15 of your report, in item C, you 11 say, "A static code analysis by ATSEC 12 revealed 14 low severity findings," correct? 13 A. Yes. 14 Q. Do you know whether or not 15 those findings are the ones that are resolved 16 here in -- 17 A. So here's what I will say, is 18 that some of those findings are addressed in 19 this. However, if you look at the resolve, 20 they're actually not resolved. 21 So basically, they have 22 attempted to put in some compensating 23 controls to mitigate the effects of those 24 particular vulnerabilities. 25 Specific is the Air Gap system,
1 your report is, County of Los Angeles VSAP 2 2.1 Stat Report, a PDF, correct? 3 A. Correct. 4 Q. I'm going to put a document 5 into the chat, which will be Exhibit 707 -- 6 709. 7 I apologize. This will be 708. 8 The document for the record with Bates 9 identifier Smartmatic-Lindell 00017735. 10 (Exhibit No. 708 marked for 11 identification.) 12 BY MR. FREY: 13 Q. Let me know when you have that, 14 Mr. Cotton. 15 A. I have that. 16 Q. All right. Do you see that 17 this is a County of Los Angeles VSAP Tally 18 Voting System Staff Report, dated August 14, 19 2020? 20 A. I do. 21 Q. Did you -- is this the document 22 you reviewed in forming your opinions on the 23 case? 24 A. Yes, this is the one that is 25 listed in my declaration.	1 and that's used on a number of these cases 2 that says, Well, we don't have to worry about 3 this because it's an Air Gap system. 4 Okay. The challenge with that 5 is: One, it doesn't address any insider 6 threat. So if a user -- a malicious user has 7 authorized access to that Air Gap system, 8 then the vulnerability is still there, okay? 9 If someone penetrates that Air 10 Gap system through island-hopping or some 11 other mechanism, then that vulnerability is 12 still there. So it's not resolved in the 13 formal sense of that word, as in it doesn't 14 exist anymore. 15 It still exists, but they have 16 attempted to put in a compensating control 17 for that. 18 Q. And the control that is put in 19 is meant to protect the integrity of the 20 voting results in the election, right? 21 A. It's an effort to protect the 22 system, yes. 23 Q. And so, just so I understand 24 your opinions here, are you not concerned 25 about -- or are you not taking into account

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
141-144

Page 141	Page 143
<p>1 efforts that would protect the integrity of 2 the system if there is still a technical 3 vulnerability in the software?</p> <p>4 A. You know, I've been doing 5 incident response for a long time. And I 6 have been dealing with hackers for a long 7 time.</p> <p>8 And I have dealt in the U.S. 9 government on the classified side of programs 10 as a contractor. And I know the techniques 11 and the methodologies by which you can bypass 12 these compensating controls. So I recognize 13 the fact that they put a compensating control 14 in place.</p> <p>15 But if, you know, there's this 16 little problem with people in the middle of 17 these things, right? How do they implement 18 them? How did they set that up? How did 19 they configure these systems in conjunction 20 with the compensating controls to ensure that 21 they weren't exploited, right?</p> <p>22 So you may have heard of 23 Stuxnet, that's a pretty famous open source 24 vulnerability that jumps Air Gap systems, and 25 it does it through devices.</p>	<p>1 Q. And for each of these 2 interfaces, are you differentiating whether 3 it was on a Smartmatic device or a different 4 component of the VSAP system?</p> <p>5 A. So the VSAP system looked at 6 all components as a whole. So I didn't 7 differentiate that Smartmatic has this 8 specific, you know, thing -- only Smartmatic, 9 et cetera.</p> <p>10 Q. Item D on your list says, 11 "Remote voting is provided by Amazon web 12 servers and is open to the public Internet."</p> <p>13 What is the basis for your 14 statement there?</p> <p>15 A. Specifically, I believe it's 16 the -- within the report, as they're listing 17 the dependencies of these different 18 components, there's a specific listing in 19 there, both on the ATSEC report and this is 20 referenced also in the user guide for Amazon 21 web services. And so it relies on Amazon web 22 services for its functionality.</p> <p>23 Q. And what is your understanding 24 as to how it relies on Amazon web services?</p> <p>25 A. My understanding is that it</p>
<p>1 Another common methodology is 2 island-hopping, where someone -- either 3 witting or unwitting -- establishes a 4 connection on an Air Gap system through an 5 external wi-fi or other mechanism.</p> <p>6 So there are multiple ways that 7 you could bypass these mechanisms. I 8 recognize the fact that they are in place and 9 they're attempting to use that as a 10 compensating control.</p> <p>11 But without actually examining 12 the system to determine whether or not those 13 controls were effective, is a different 14 matter entirely.</p> <p>15 Q. Moving on to paragraph 16 of 16 your report, you say:</p> <p>17 "Based on my review of the 18 ATSEC source code review report, the 19 Smartmatic and VSAP devices have the 20 following interfaces that are used for 21 data transfer and communications with 22 other network devices."</p> <p>23 And then you list A to K, 24 correct?</p> <p>25 A. Correct.</p>	<p>1 uses the S-3 buckets as a repository for 2 data.</p> <p>3 Q. And do you -- what is your 4 understanding of whether that -- Amazon web 5 service's use is implemented through a 6 Smartmatic-manufactured component of VSAP, 7 versus some other component of the VSAP 8 system?</p> <p>9 A. Well, just if you'd allow me to 10 look at the ATSEC, I'll tell you exactly 11 which component. Just one minute.</p> <p>12 So it's the ISB.</p> <p>13 Q. What page are you looking at?</p> <p>14 A. On the ATSEC, it's page 15.</p> <p>15 Q. Page 15 -- okay. Next to ISB.</p> <p>16 A. Yeah. "Amazon services is used 17 for cloud-based hosting and storage."</p> <p>18 Q. And is this statement here on 19 page 15, is that -- that the reference that 20 you are relying on for inclusion of this 21 Amazon web servers --</p> <p>22 A. That's also referred to in the 23 user guide, the user manual as well.</p> <p>24 Q. Did you say before that was the 25 user guide for 3.0? Or for 2.1?</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
153-156

<p style="text-align: right;">Page 153</p> <p>1        Do you see that?</p> <p>2        A. Yes.</p> <p>3        Q. What's the relevance of that</p> <p>4 statement?</p> <p>5        A. So they had this software</p> <p>6 testing report up there but it was only a</p> <p>7 sliver or small subcomponent of the actual</p> <p>8 software system.</p> <p>9           So while they have that up</p> <p>10 there, just the tally software was addressed,</p> <p>11 and any software that was contained on any of</p> <p>12 the other components were not part of that</p> <p>13 report.</p> <p>14        Q. Okay. So in that particular</p> <p>15 report, it was limited to the tally software?</p> <p>16        A. Correct.</p> <p>17        Q. And did you look at the --</p> <p>18 listed in number 1 of your report, on 13-I --</p> <p>19 the Consultant Security and</p> <p>20 Telecommunications Testing Report?</p> <p>21        A. Yes.</p> <p>22        Q. And to the extent that that</p> <p>23 included the BMD and other components, would</p> <p>24 that ameliorate your concern in paragraph 19?</p> <p>25        A. Probably not. If I recall that</p>	<p style="text-align: right;">Page 155</p> <p>1        Q. And that was the components of</p> <p>2 the systems we discussed this morning?</p> <p>3        A. That's correct.</p> <p>4        Q. And is it correct that, I</p> <p>5 believe for the Maricopa County system, you</p> <p>6 had pretty much the whole system, right?</p> <p>7        A. Yes.</p> <p>8        Q. But the other four, you were</p> <p>9 only looking at pieces of the whole election</p> <p>10 system in those jurisdictions, right?</p> <p>11       A. That's correct. In all of</p> <p>12 those jurisdictions, I had what I call kind</p> <p>13 of the brains of the system, which is the</p> <p>14 election management system or the EMS. And</p> <p>15 then I had differing components that I was</p> <p>16 able to analyze.</p> <p>17       Q. And you yourself collected the</p> <p>18 Maricopa County system, but I believe other</p> <p>19 individuals had imaged or collected the</p> <p>20 systems in Antrim County, Michigan; Adams</p> <p>21 County, Michigan; Coffee County, Georgia, and</p> <p>22 the other Georgia system; is that right?</p> <p>23       A. Arizona, Michigan, Georgia,</p> <p>24 yes. Those were -- Arizona, I did the actual</p> <p>25 collection or people under my direct</p>
<p style="text-align: right;">Page 154</p> <p>1 document -- and I don't have that in front of</p> <p>2 me right now -- that was primarily concerned</p> <p>3 with the network traffic from these devices.</p> <p>4        Q. Moving on to paragraphs 20 and</p> <p>5 21, these are the paragraphs where you're</p> <p>6 kind of relying on your work prior to this</p> <p>7 litigation; is that right?</p> <p>8        A. Yeah. So these two paragraphs</p> <p>9 were designed to provide a kind of a</p> <p>10 visualization of the state of insecurity for</p> <p>11 the existing voting systems that I have had</p> <p>12 the opportunity to analyze.</p> <p>13       There's a misperception out</p> <p>14 there that because the EAC in this case -- or</p> <p>15 the certification body for those other</p> <p>16 systems -- because those are certified, then</p> <p>17 they are secure.</p> <p>18       And that is a very drastic</p> <p>19 misconception, because there are very serious</p> <p>20 cyber security issues with those systems as</p> <p>21 they exist.</p> <p>22       Q. Okay. And again, so that's a</p> <p>23 -- that's the voting systems you've analyzed</p> <p>24 from Arizona, Michigan and Georgia, correct?</p> <p>25       A. That's correct.</p>	<p style="text-align: right;">Page 156</p> <p>1 supervision collected that, and the others</p> <p>2 were provided to me in the form of forensics</p> <p>3 images that had been collected by other</p> <p>4 parties.</p> <p>5       Q. In at least three of those</p> <p>6 instances, the person who had performed the</p> <p>7 collection was at least alleged to have done</p> <p>8 so without authorization, right?</p> <p>9       A. Well, people make a lot of</p> <p>10 allegations. As I looked at what I knew of</p> <p>11 the chain of custody path, I felt confident</p> <p>12 that in all cases, the local election</p> <p>13 officials had authorized those collections,</p> <p>14 and that the people were authorized to make</p> <p>15 those collections. In the case of Antrim</p> <p>16 County --</p> <p>17       (Cross talk.)</p> <p>18       (Reporter clarification.)</p> <p>19       THE WITNESS: In the case of</p> <p>20 Antrim County, they actually had a</p> <p>21 court order to perform that imaging</p> <p>22 process.</p> <p>23 BY MR. FREY:</p> <p>24       Q. Right. For Antrim County and</p> <p>25 then in Maricopa County, you had the</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
157-160

<p>1 subpoena, correct?</p> <p>2 A. Correct.</p> <p>3 Q. So I am thinking about the</p> <p>4 other three, was the focus of my question</p> <p>5 there.</p> <p>6 A. Yeah, in the -- in those other</p> <p>7 cases, there was implicit authorization by</p> <p>8 the County clerks who were the election</p> <p>9 officials for that collection or for that</p> <p>10 imaging to occur.</p> <p>11 Q. And I guess my question is, the</p> <p>12 person who did the collection was not you,</p> <p>13 nor under your supervision in those three</p> <p>14 instances, right?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay. So now looking at 20 in</p> <p>17 particular, you discussed this CISA Best</p> <p>18 Practices For Securing Election Systems,</p> <p>19 dated November 2022, right?</p> <p>20 A. Correct.</p> <p>21 Q. And you last reviewed it</p> <p>22 September 21st, which is the date before your</p> <p>23 declaration. And I'm assuming -- you checked</p> <p>24 to make sure it didn't change and that it was</p> <p>25 the same?</p>	<p>Page 157</p> <p>1 forensics images that are preserved. For</p> <p>2 example, in Arizona, the installation date</p> <p>3 for the Dominion software on their systems</p> <p>4 was, I believe the 6th of August of 2019.</p> <p>5 From that day forward, there was not a single</p> <p>6 system patch that was applied to that</p> <p>7 computer or to those computers.</p> <p>8 From that day forward, there</p> <p>9 was not a single update to the antivirus</p> <p>10 software definition.</p> <p>11 The number of vulnerabilities</p> <p>12 that were created between the time they</p> <p>13 installed that software and the time that I</p> <p>14 imaged that system was, well, roughly about a</p> <p>15 million vulnerabilities a day were created.</p> <p>16 So you can do the math.</p> <p>17 We imaged those systems in</p> <p>18 April of 2021, so you're talking 700 million</p> <p>19 -- at least -- vulnerabilities that existed</p> <p>20 out in the wild, that these systems would not</p> <p>21 have prevented.</p> <p>22 Q. So you are looking at the</p> <p>23 Arizona system there to say that they do not</p> <p>24 comply.</p> <p>25 Anything else?</p>
<p>1 A. Correct. Yes. I do have</p> <p>2 knowledge that that web link now is changed</p> <p>3 to a different link, sometime after that</p> <p>4 point in time.</p> <p>5 But if you do a search for the</p> <p>6 best practices for securing election systems,</p> <p>7 you'll find the proper link.</p> <p>8 Q. And then you say that there is</p> <p>9 recommendations in, it looks like A to H</p> <p>10 areas, right? So --</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And it looks like you</p> <p>13 say what the area is, and then note whether</p> <p>14 the systems you looked at were in compliance</p> <p>15 or not in compliance?</p> <p>16 A. Yes.</p> <p>17 Q. Is that accurate?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So the first software</p> <p>20 and patch management, you say, the analyzed</p> <p>21 election systems do not comply, right?</p> <p>22 A. Correct.</p> <p>23 Q. And what is the evidence that</p> <p>24 they do not comply, I guess?</p> <p>25 A. So the evidence stems from the</p>	<p>Page 158</p> <p>1 A. Well, it's not only the Arizona</p> <p>2 system. It was every system that I could</p> <p>3 get, that I actually physically analyzed a</p> <p>4 forensics image on. And it was the same</p> <p>5 situation across the board.</p> <p>6 Q. And that was the five we've</p> <p>7 talked about, right? When we're talking</p> <p>8 about the analyzed election systems, it's</p> <p>9 those five jurisdictions from Arizona,</p> <p>10 Michigan and Georgia, right?</p> <p>11 A. And Colorado, so the --</p> <p>12 Q. And Colorado, yeah.</p> <p>13 A. Yeah. The one exception to</p> <p>14 that in this case is, I didn't get a physical</p> <p>15 image of the Adams County Township. If you</p> <p>16 remember, I stated my scope, and it was not</p> <p>17 the actual physical examination of a</p> <p>18 forensics image on that.</p> <p>19 Q. And for this definition of</p> <p>20 analyzed election systems, that does not</p> <p>21 include LA County, correct?</p> <p>22 A. That's correct. As of yet, I</p> <p>23 have not been able to analyze a single system</p> <p>24 that was utilized in the 2020 election in LA</p> <p>25 County.</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
161-164

<p style="text-align: right;">Page 161</p> <p>1 Q. And that is the same for all of 2 A through H, correct? That -- the analyzed 3 election systems you refer to in your report 4 do not include LA County?</p> <p>5 A. Yes. Basically, this shows a 6 pattern within the voter jurisdictions -- the 7 voting jurisdictions -- of a lack of 8 attention to detail to cyber security.</p> <p>9 I would welcome the opportunity 10 to examine an LA County system to see if that 11 pattern continues into LA County.</p> <p>12 Q. And so if we take out Adams 13 County or Adams Township, there are four 14 jurisdictions that you've reviewed, right?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know how many voting 17 jurisdictions there are in the United States?</p> <p>18 A. I don't. I'm obviously limited 19 by the opportunities that are presented to me 20 to look at. I would love to look at every 21 single one.</p> <p>22 Q. Do you know -- do you have an 23 approximation of how many voting 24 jurisdictions there are in the United States?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 163</p> <p>1 asked.</p> <p>2 Q. And so in that case, I have to 3 ask you for each one here so we can 4 understand what your testimony is going to be 5 -- because it's not listed in the report and 6 we don't have the system. So I need to 7 understand, you know, the testimony you're 8 going to be providing.</p> <p>9 So we'll move onto item B, log 10 management. You say the analyzed election 11 systems do not comply with CISA 12 recommendations.</p> <p>13 What is basis for that 14 statement?</p> <p>15 A. Well, there's two aspects to 16 that: One, the CISA recommendation 17 recommends that you use an aggregated logging 18 source. So in some technologies, it's called 19 a SEIM, S-E-I-M.</p> <p>20 And basically, what that 21 prevents is the changing of logs by 22 intruders. So logging itself is conducted, 23 both by the application and by the operating 24 system itself on these loading systems.</p> <p>25 In the case of the analyzed</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. If it was over 10,000, would 2 that surprise you?</p> <p>3 A. No.</p> <p>4 Q. As a cyber security analyst and 5 a scientist, do you think that 4 out of over 6 10,000 is enough to make a determination as 7 to how the jurisdictions operate in 8 compliance with CISA recommendations as a 9 whole?</p> <p>10 A. I would say that if you're 11 provided the opportunity to look at 4, and 12 100 percent of your sampling is indicative of 13 a certain result, there is a high probability 14 that that result will continue on through 15 other jurisdictions.</p> <p>16 Q. And those four opportunities 17 were brought to you, correct?</p> <p>18 A. They were part of my 19 engagements as an expert witness, yes.</p> <p>20 Q. At trial in this matter, are 21 you intending to provide testimony with 22 examples as to how each of these four 23 analyzed election systems do not comply with 24 the various CISA recommendations?</p> <p>25 A. I am prepared to do so, if</p>	<p style="text-align: right;">Page 164</p> <p>1 systems, which we have discussed, the 2 voting -- or the operating system logs were 3 set to 20 megabytes of data retention.</p> <p>4 Well, in a big county with lots 5 of activity, that is not enough space to 6 store all of the logs covering an election 7 time period from October through November, 8 right?</p> <p>9 And so logs are overwritten, 10 logs are no longer there, and there is no 11 independent storage of those logs to preserve 12 that data.</p> <p>13 And that is one of the CISA 14 recommendations, is that you have an 15 independent storage of those logs. And that 16 could be part -- part of that Air Gap system, 17 but they want you to store those logs 18 independently from the systems that generate 19 them.</p> <p>20 It's a common hacker tactic 21 that if you do get access to a system, you 22 know when you accessed it, you know when you 23 left it, and you can wipe and delete all 24 activities in those logs during those time 25 periods with a very simple power shelf</p>

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
165-168

Page 165	Page 167
<p>1 script. And that's a common tactic,      2 technique, and procedure for hacking and      3 unauthorized activity.</p> <p>4 So the CISA is recommending:      5 One, that you have larger log sizes; and two,      6 that those logs, as soon as they are created,      7 are then sent to an independent storage      8 device, separate from the device that created      9 them.</p> <p>10 None of these systems had any      11 -- any independent storage device for      12 analysis or just storage, and they were all      13 set to 20 megabytes, which was not sufficient      14 to record the data for the election time      15 period.</p> <p>16 Q. And that was each of the four      17 jurisdictions where you had the full data?</p> <p>18 A. That's correct.</p> <p>19 Q. So network segmentation, you      20 note that the systems partially comply with      21 CISA recommendations.</p> <p>22 Is -- what do you mean by,      23 "they partially comply"?</p> <p>24 A. So, in the four analyzed      25 systems, they did make an attempt to Air Gap</p>	<p>1 Q. That particular one.      2 At a higher level, there has      3 been disagreement with what your analysis      4 showed from the entities that actually had      5 the opportunity to review the same data as      6 you, correct?</p> <p>7 A. Well, that's a misnomer. They      8 didn't review the same data as I did. They      9 didn't review the forensics images.</p> <p>10 They did not review the same      11 devices that were present in the network at      12 the time that the election occurred. So they      13 did not look at the same data that I did.</p> <p>14 Q. Did -- in the Coffee County,      15 Georgia data that you looked at, was there an      16 opposing party who also did a review?</p> <p>17 A. Not as of yet -- at least, I      18 haven't seen a report yet.</p> <p>19 Q. How about in Antrim County,      20 Michigan?</p> <p>21 A. J. Alex Halderman provided a      22 report, but that was more geared towards the      23 effects on the database and the election      24 definitions than the actual findings for      25 cyber security pieces. In the Curling case,</p>
<p>1 the election network. But the second part of      2 that is that you have to monitor those      3 networks to ensure that no unauthorized      4 device is present on the Air Gap system, and      5 none of those systems had any monitoring of      6 the network activity on those systems.</p> <p>7 Q. And how do you know that?</p> <p>8 A. From my analysis. So they did      9 not -- in order to monitor that, they would      10 have either had to have: A, an independent      11 device that was off of the one of the port      12 switches or resident inside of the network;      13 or they would have had to have had an onboard      14 PCAP collector like Wire Shark that would      15 capture that network traffic.</p> <p>16 They did not have either of      17 those in any of those four networks.</p> <p>18 Q. And am I correct that in the      19 case of at least Maricopa County, the      20 opposing party to you in the litigation      21 disagreed with your findings, right? -- your      22 analysis?</p> <p>23 A. They disagreed with some of the      24 findings, but they did not disagree with that      25 finding.</p>	<p>1 he essentially agrees with my findings on      2 cyber security.</p> <p>3 Q. And how about in Mesa County,      4 Colorado? Is there another party who has      5 also had the opportunity to review and      6 analyze that data and offer an opinion      7 regarding what it shows?</p> <p>8 A. If there is, I have not seen      9 that.</p> <p>10 Q. The next note, on D, it says,      11 "Block suspicious activity. The analyzed      12 systems do not comply."</p> <p>13 Just at a high level, how do      14 the analyzed election systems not comply with      15 CISA recommendations?</p> <p>16 A. I'm trying to cut down my      17 verbiage, huh? So basically, what we're      18 looking at here is, it's called an IDS,      19 Intrusion Detection System. And that's a      20 specific form of technology.</p> <p>21 It can be hardware, it could be      22 application-based -- so that if they see a      23 variance in user activity, for example, or a      24 different device coming -- requesting a      25 remote access, then it can actually block and</p>
Page 166	Page 168

BENJAMIN COTTON  
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024  
181-184

<p style="text-align: right;">Page 181</p> <p>1 someplace, and that appears to be the IBG -- 2 or the IPB, which is in the Amazon cloud. 3 Q. That's your understanding of 4 it, correct? 5 A. That's my understanding of it. 6 And then of course, the BMG is the manager 7 for all of the ballot-marking devices, so it 8 has to be connected to the ballot-marking 9 devices. 10 Q. Are you familiar with the term 11 "software independence"? 12 A. That can be used in a number of 13 different meanings. 14 If you could define that? 15 Q. Sure. 16 In the context of voting 17 technology in particular, are you familiar 18 with the term "software independence" to mean 19 that the outcome of the election is 20 independent of how the software might 21 operate? 22 A. I understand the term. 23 However, in practice, there is question to 24 that. 25 And so the software is</p>	<p style="text-align: right;">Page 183</p> <p>1 gave there, you say "manipulation of the vote 2 record." 3 Are you talking about 4 manipulation of the paper ballot, itself? 5 A. Well, a ballot-marking device 6 produces the ballot. That becomes the paper 7 record. So if there's a manipulation prior 8 to the production of that paper ballot, then 9 that's what I am referring to. 10 Q. Okay. And that would be before 11 the voter had the opportunity to look at 12 their ballot? 13 A. No. Typically -- well, it 14 depends on the system and how the -- how this 15 works. But typically, there is a 16 verification splice screen that pops up, and 17 they look through the vote selections and 18 they say, Yeah, that's what I voted. And 19 they press a button, and then that becomes 20 committed to paper. 21 Q. And do you know whether the -- 22 at least with respect to the VSAP system in 23 2020, whether the voter would then be able to 24 review that paper? 25 A. I would have to review the</p>
<p style="text-align: right;">Page 182</p> <p>1 primarily responsible for the presenting of 2 the ballot, the recording of the ballot, and 3 the counting of the ballot. 4 So then you're relying on 5 external audit mechanisms to attempt to 6 determine statistically whether or not the 7 election is valid. 8 However, those audits are based 9 on the actual retained printed ballot. So 10 just as an example, if the -- if there was a 11 vulnerability that was introduced into the 12 system, that between the timeframe where the 13 voter approved his vote and the time that 14 that vote was actually recorded, if there was 15 a vulnerability that allowed the manipulation 16 of that vote record, then a limited-risk 17 audit would never catch it, because you're 18 looking at the modified ballots as the basis 19 of your limited risk audit. I mean, that's 20 just an example. 21 So I understand the term. The 22 true software independence, I believe, would 23 be only valid if there was absolute cyber 24 security assurance on the voting system. 25 Q. And in the example you just</p>	<p style="text-align: right;">Page 184</p> <p>1 procedures. I am not familiar with that. 2 Q. And we've talked some about 3 post-election audits, risk-limiting audits. 4 How familiar are you with the 5 different audits conducted following the 6 presidential election? 7 A. Just a top level familiarity of 8 it. 9 Q. Did you do any analysis of the 10 audits conducted in LA County on the 11 November 2020 election? 12 A. I did not. 13 Q. And so do your opinions in any 14 way take into account the post-election 15 audits that would occur after a presidential 16 election? 17 A. Well, with the scope of my 18 report, there's no impact. You know, the 19 audits have no impact as to the findings in 20 my report. 21 Q. And that's because your report 22 is just identifying that vulnerabilities 23 exist -- or could exist in the software, 24 right? 25 A. That's correct. Yes, should I</p>